(16,459.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 680.

THE WASHINGTON GAS LIGHT COMPANY, CHARLES B. BAILEY, AND JOHN LEETCH, PLAINTIFFS IN ERROR,

vs.

THOMAS G. LANSDEN.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 26, 1897.

1 In the Court of Appeals of the District of Columbia.

THE WASHINGTON GAS LIGHT COMPANY, CHARLES B. BAILEY, and JOHN LEETCH, Appellants,
vs.
THOMAS G. LANSDEN. } No. 583.

Supreme Court of the District of Columbia.

THOMAS G. LANSDEN, Plaintiff,
vs.
THE WASHINGTON GAS LIGHT COMPANY (a Corporation); John R. McLean, President; Charles B. Bailey, Secretary; William B. Orme, Assistant Secretary, and John Lee-ch, General Superintendent, Defendants. } At Law. No. 36410.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Declaration.

Filed June 9, 1894.

In the Supreme Court of the District of Columbia.

THOMAS G. LANSDEN, Plaintiff,
vs.
THE WASHINGTON GAS LIGHT COMPANY (a Corporation); John R. McLean, President; Charles B. Bailey, Secretary; William B. Orme, Assistant Secretary, and John Leetch, General Superintendent, Defendants. } At Law. No. 36410.

The plaintiff, Thomas G. Lansden, complains of the defendants, The Washington Gas Light Company, a corporation duly incorporated and doing business in the city of Washington, in the District of Columbia; John R. McLean, who is president of the said company; Charles B. Bailey, who is secretary; William B. Orme, who is assistant secretary, and John Leetch, who is general superintendent of the same, of a plea of trespass on the case:

2 For that whereas the plaintiff is and ever has been a person of truth and honesty, faithful in business, and upright in his conduct, and is and ever has been wholly free from the vice of prevarication or of falsification, and, until the committing of the griev-

ance hereinafter mentioned, was always reputed, and deservedly, to be a person of good fame and credit, and, until the committing of the said grievance, never had been suspected to be guilty of improper, unfair, dishonest, or untruthful speech or conduct of any kind or in any way;

And whereas also before the committing of the said grievance, to wit, in January, 1893, the House of Representatives having in its action on the sundry civil appropriation bill for the fiscal year ending June 30, 1894, provided that not more than seventy-five cents per thousand feet should be paid for the gas used in the Government buildings in the District of Columbia, the defendant John R. McLean, then and now the president of the said company, told the plaintiff, then in the employ of the said company, that he, the said McLean, wanted the plaintiff to furnish him, the said McLean, with a written memorandum showing to what he, the plaintiff, could testify in regard to the matter before a committee of Congress, the memorandum to serve as a basis for questioning by a member of the committee, as represented by the said McLean; and the plaintiff wrote out such a memorandum, but did not mention therein the cost of gas to the defendant company, and gave the said memorandum to the said McLean, who, noticing that the plaintiff had said nothing as to the cost of gas, told the plaintiff that the committee would be apt to ask questions in regard to the cost; but the plaintiff, being concerned with the making only of gas and not with its distribution told the said McLean that he, the said McLean, would himself have to answer such questions, the actual cost, embracing all parts of the service, being known to only the chief officers of the company, and the plaintiff was not called or used by the said McLean or by the defendant company, of which the said McLean was president, as a witness before a committee of Congress on the occasion aforesaid, nor did he, the plaintiff, appear or testify to or before a committee of Congress as to the cost of gas or as to any other matter pertaining to the defendant company or its business on the occasion aforesaid or in the year aforesaid.

But the plaintiff did thereafter, on another occasion, to wit, in February, 1894, and when not thereto required or requested by the said McLean, the defendant company, or any of its officers or agents, appear before a committee of Congress and testify to the figures at which he, the plaintiff, supposed that gas could be actually produced and furnished in the city of Washington.

Yet the defendants, well knowing the premises, but fraudulently, maliciously, and wickedly contriving to injure the plaintiff in his said good fame and credit, and to bring him into scorn, public scandal, infamy, and disgrace, and to injure him in the business which he had theretofore followed, to wit, that of working in the manufacture of gas, and to vex, harass, oppress, impoverish,
3 and wholly ruin him, the said plaintiff, did heretofore, to wit, in the month of February, 1894, compose and publish and cause and procure to be composed and published of and concerning the plaintiff and of and concerning the testimony by him given before the committee of Congress as aforesaid, in a certain newspaper

or periodical called "The Progressive Age," the same being printed in the city of New York, State of New York, and widely circulated as an organ devoted to the interests of gas producers and manufacturers throughout the country, a certain false, scandalous, malicious, and defamatory libel of the tenor following, to wit:

"The acrobatic performances of Lansden" (meaning the plaintiff).

"To a very recent date, assuming his St. Louis exploit to have been overlooked and pardoned, Mr. Thomas G. Lansden, late superintendent of the Washington, D. C., Gas Light Company, while doing nothing in particular to direct attention to his connection with the gas industry as a whole, has refrained from conduct that would lower him in the eyes and opinions of his coworkers or forfeit him the respect due a man of Mr. Lansden's years and former position in the business.

"A congressional committee has been investigating the Washington Gas Light Company. Complaints were lodged by some of the patrons of the company with the Committee on the District of Columbia, which has jurisdiction in all matters affecting affairs connected with the capital city, and Congress ordered an investigation. Many witnesses have been heard on both sides of the question, and among them appeared Mr. Thomas G. Lansden, who had filled the position of superintendent with this company for a period of seven years prior to his resignation in June of last year. This gentleman did not come forward, as might have been expected, to render such help as he could to assist his former associates over their present difficulties and to say a good word in behalf of the company with which he had so long been identified and by which he had been most generously requited; on the contrary, Mr. Lansden has arrayed himself within the ranks of those who sought to tear down and lay waste the business and emoluments of his former employers. Moreover, by reason of the nature of his testimony, Mr. Lansden has caused a report of his statements to be circulated the length and breadth of the land, and the subject-matter contained therein is well calculated to do the utmost harm to gas interests everywhere. Mr. Lansden's statements as made under oath before this investigating committee have been telegraphed from one end of the country to the other, and newspapers in many of the principal cities throughout the United States have copied the statements which have appeared in all Washington papers during the progress of the investigation. To what extent is best shown when we say that more than a score of newspapers containing Mr. Lansden's statements about the cost of making and distributing gas have come to our notice since his testimony was given, and the end is not yet. The figures of cost supplied by Mr. Lansden are start-
4 ling, to say the least, and more than one gas company will, we apprehend, ere long find itself confronted with his figures and compelled to battle hard in an effort to overcome the bad effects on the public mind.

"It is because of the general interest that is likely to suffer for

Mr. Lansden's indiscretion that we give heed to the matter, not through a desire to extend special favor to the Washington Company, nor is it because of any ill will entertained by us for Mr. Lansden. If the cause of the company is just, as we believe it to be, it will come out of the investigation a victor. The present investigation is not the first in which Mr. Lansden has appeared as witness. Only a year ago a similar inquiry emanating from the same quarter was instituted against the Washington Gas Light Company. Then Mr. Lansden appeared as a witness in behalf of the company. He at that time occupied the position of superintendent with the company. His testimony then and that of this year are so sadly at variance that we should be remiss in our duty if we permit the occasion to pass without directing attention to these differences. Moreover, we should be guilty of withholding from gas managers information which will be of material assistance to them in breaking the force and effect of Mr. Lansden's recent statements.

"Under a former resolution of Congress bearing date of February, 1893, Mr. Lansden was called upon to answer certain questions bearing upon the reduction of price of gas at Washington. We herewith give the questions propounded to Mr. Lansden during the investigation of last year and his replies thereto. This we follow with the interrogatories put to him and his answers during the present investigation:

Lansden in 1893.

"'Question. What does gas cost to manufacture at your works?

Answer. It costs 48.38 cents per thousand in the holder and 40.09 cents per thousand for distribution.

Q. Can you in any way reduce the cost of gas in manufacturing so your company could sell for less to the consumer?

A. I know of but one way that a small amount could be saved—that is, by reducing the salaries of our clerks and the price paid to our laborers. This we would not like to do.

Q. How do the prices charged for lamps in Washington compare with other cities?

A. They are as low as any where the same amount of gas is burned to the lamp and the same number of hours lighted in the year and when the company lights and cleans the lamps.

Lansden in 1894.

Q. From your knowledge of the business and condition of affairs here, at what price could the gas company sell gas and pay a reasonable profit?

A. Well, sir, I think they can sell it at $1 a thousand.

5 That is the reason I came before this committee. I am a gas-consumer today, and I have had a good deal of experience, and I think it to the interest of the gas company to stop all these troubles, and they should put the price down to $1 a thou-

sand and stop the annoyance. They should make good gas and put the price down to $1.

Q. Will it stop the complaints?

A. Not entirely. You never will do that.

Q. What is the result of your experience, if you are able to submit a statement to the committee—leaving out of consideration the interest on investment and plant, etc., what is the actual cost per thousand for the production of gas in the city of Washington?

A. Do you mean what it can be made for?

Q. What did you make it for under your management?

A. Without counting interest, you mean?

Q. Without counting the interest on investment.

A. It can be put in the holder with the present modern machinery which the company has for about 32 cents, with the proportion they are making now of water gas and coal gas. I think it ought to be distributed for 20 to 22 cents a thousand.

Q. What is the next item of cost after putting it in the holder?

A. Distribution. After it is put in the holder it is drawn out by the consumer; and then there is the expense of inspectors taking the statements and running what we call the upper offices.

Q. What percentage of cost would that be?

A. I put that between 20 and 22 cents.

Q. That would make this cost 54 to 56 cents per thousand?

A. Yes, sir; I think so.

Q. That includes office expenses?

A. Then come taxes and repairs, and I think it can be easily made inside of 70 cents, counting in repairs and taxes.

Q. Now, does that include everything except interest on investment?

A. Interest on investment comes in the shape of dividends, I consider.'

"From the foregoing extracts of this witness' testimony only one of two conclusions can be arrived at, and we are too sensible of the reader's power of analysis and feel to- keenly for the witness to heap coals of fire on the head of one whom, it is only too evident, has allowed his sense of justice to be distorted by real or fancied grievances. The testimony given by Mr. Lansden in 1893 states in effect that there is no way open to his company by which it could reduce the cost of manufacturing gas. In 1894 he tells the committee that, taxes and repairs added—items not considered in the inquiry of the previous year—the cost of gas delivered to the consumer could be brought within 70 cents, or about 18½ cents less per thousand than he quoted as the lowest manufacturing and distributing cost the year before; and yet Mr. Lansden must know that the generating apparatus at the Washington works is the same as when
6 he filled the position as superintendent; that the cost of all materials used, coal, and labor are just the same, save only nap-tha, which is now higher in price than when he testified a year ago.

"Every man must be the custodian of his own conscience, and

it is not for us to decide how Mr. Lansden will reconcile himself to his present unhappy position. If the gentleman has given up all thought of again associating himself with a gas enterprise, possibly he is indifferent to the effect of his predicament, but if he still entertains an idea of continuing his former calling he should lose no time in setting himself straight in the eyes of his former associates. In view of the testimony, we can readily believe this will prove a most difficult undertaking, but there is always two sides to a story, and possibly Mr. Lansden may have in reserve some evidence that will enable him to sustain his present position; if so, our columns are open to him for such purpose."

Which said false, scandalous, malicious, and defamatory libel was composed and published and procured to be composed and published by the defendants of an- concerning the plaintiff, the defendants meaning and intending thereby to charge the plaintiff with having on a previous occasion, before a committee of Congress, testified as to the cost of furnishing gas in a manner altogether different from the manner in which he testified in February, 1894, and in a manner wholly inconsistent therewith, whereas in truth and in fact the plaintiff did not testify before a committee of Congress except in 1894, as aforesaid, and did not on any previous occasion speak to such a committee of or concerning the cost of gas, and further meaning and intending thereby to make it appear that the plaintiff, by appearing and testifying as he did before the committee of Congress in 1894, had grossly violated his duty to the defendant company and perpetrated a wrong upon it and all other gas companies in the country, whereas in truth and in fact the plaintiff did not violate his duty nor do an injustice to the defendant company or any one else in or by his testimony so given as aforesaid, and further meaning and intending thereby to charge the plaintiff with having committed perjury before a committee of Congress authorized and empowered by law to administer oaths to witnesses in any matter under congressional investigation, and a witness who has taken such oath and given testimony thereunder falsely is by law guilty of perjury and liable to be punished with the pains and penalties for said offense provided.

By means of which false and scandalous libel the plaintiff has suffered great anxiety of mind and hath been and is greatly injured in his good name and reputation, and brought into scorn, public scandal, infamy, and disgrace, insomuch that divers good and worthy citizens have, by reason of the committing of the grievance aforesaid, suspected and believed and still do suspect and believe the plaintiff to have testified on two occasions, as in the said publication mentioned and in the inconsistent manner therein alleged, and to have been guily of bad and improper conduct so published of and concerning him, and have, by reason of
7 the committing of the said grievances, thence till now wholly refused to have any transaction, acquaintance, or business dealing with the plaintiff, as they otherwise would have had, to the

damage of him, the said plaintiff, in the sum of fifty thousand dollars ($50,000.00), and therefore he brings his suit.

J. ALTHEUS JOHNSON,
J. J. DARLINGTON,
Attorneys for Plaintiff.

The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

J. ALTHEUS JOHNSON,
J. J. DARLINGTON,
Attorneys for Plaintiff.

Defendants' Plea.

Filed June 29, 1894.

In the Supreme Court of the District of Columbia.

THOMAS G. LANSDEN, Plaintiff,
vs.
THE WASHINGTON GAS LIGHT COMPANY (a Corporation); John R. McLean, President; Charles B. Bailey, Secretary; William B. Orme, Assistant Secretary, & John Leetch, General Superintendent, Defendants. } At Law. No. 36410.

Now come the defendants and for plea to the declaration filed in the above-entitled suit say that they are not guilty as therein alleged.

A. T. BRITTON,
A. B. BROWNE,
WEBB & WEBB,
Attorneys for Defendants.

Joinder in Issue.

Filed June 30, 1894.

In the Supreme Court of the District of Columbia.

THOMAS G. LANSDEN, Plaintiff,
vs.
THE WASHINGTON GAS LIGHT COMPANY *et al.* } At Law. No. 36410.

The plaintiff joins issue upon the defendants' plea.

J. J. DARLINGTON,
J. ALTHEUS JOHNSON,
Attorneys for Plaintiff.

8 *Memorandum.*

March 6, 1896.—Verdict for plaintiff *vs.* defendants The Washington Gas Light Co., Charles B. Bailey, and John Leetch for $12,500.00.

March 10, '96.—Motion for new trial filed.

SATURDAY, *April* 4, 1896.

Session resumed pursuant to adjournment, Mr. Justice McComas presiding.

* * * * * * *

The following cases were certified to crim. court No. 1, Justice Cole presiding.

* * * * * * *

THOMAS G. LANSDEN, Plaintiff,
vs.
THE WASHINGTON GAS LIGHT COMPANY (a Corporation), John R. McLean, Charles B. Bailey, William B. Orme, John Leetch, Defendants. } At Law. No. 36410.

This case coming on for hearing upon the defendants' motion for a new trial and the same having been heard, it is considered by the court that said motion be, and the same is hereby, overruled and judgment on verdict ordered. Therefore it is considered that the plaintiff recover against the defendants The Washington Gas Light Company, Charles B. Bailey, and John Leetch, twelve thousand five hundred dollars ($12,500), in manner and form aforesaid assessed, with interest thereon from the 6th day of March, 1896, being the money payable by them to the plaintiff by reason of the premises, together with his costs of suit, to be taxed by the clerk, and have execution thereof.

Whereupon the defendants note an appeal to the Court of Appeals of the District of Columbia, and the penalty of the bond fixed at $20,000.00, to act as a supersedeas.

Memorandum.

April 6, '96.—Jan'y term extended 30 days to settle bill of exceptions.

9 *Order for Appeal.*

Filed April 24, 1896.

In the Supreme Court of the District of Columbia, the 24 Day of April, 1896.

THOS. G. LANSDEN
vs.
THE WASHINGTON GAS LIGHT COMPANY *et al.* } At Law. No. 36410.

The clerk of said court will please enter an appeal from the judg-

ment in this case rendered on April 4th and issue citation to the appellee.

W. D. DAVIDGE,
WEBB, WEBB & LINDSLEY,
Attorneys for the Washington Gas Light Company, John Leetch, Chas. B. Bailey, Appellants.

In the Supreme Court of the District of Columbia.

THOMAS G. LANSDEN
vs.
THE WASHINGTON GAS LIGHT COMPANY, John R. McLean, Charles B. Bailey, William B. Orme, and John Leetch. } At Law. No. 36410.

The President of the United States to Thomas G. Lansden, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 24th day of April, 1896, wherein The Washington Gas Light Company, Charles B. Bailey, and John Leetch are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 24th day of April, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 25 day of April, 1896.
J. J. DARLINGTON,
Attorney for Appellee.

Memorandum.

April 24, '96.—Bond for appeal filed.

10 WEDNESDAY, *May* 6, 1896.

Session resumed pursuant to adjournment, Mr. Justice McComas presiding.

* * * * * * *

THOMAS G. LANSDEN, Plaintiff,
vs.
THE WASHINGTON GAS LIGHT CO. *et al.*, Defendants. } At Law. No. 36410.

Now again come here the defendants, by their attorneys, and tenders to the court here their bill of exceptions taken during the

trial of this case, and prays that it may be duly signed, sealed, and made a part of the record, now for then, which is done accordingly.

Bill of Exceptions.

Filed in open court May 6, 1896.

In the Supreme Court of the District of Columbia.

THOMAS G. LANSDEN *vs.* THE WASHINGTON GASLIGHT COMPANY, JOHN R. McLean, Charles B. Bailey, William Orme, and John Leetch.	At Law. No. 36410.

Be it remembered that the above-entitled cause came on — trial on the second day of March, A. D. 1896, before Mr. Justice Cole and a jury, when were present on behalf of the plaintiff Mr. Darlington and Mr. Johnson and on behalf of the defendant- Messrs. Webb and Webb and A. B. Browne.

And thereupon the plaintiff, to maintain the issues on his part joined, produced as a witness one JOHN LEETCH, who, being first duly sworn, testified that he had been served with a subpœna to produce a letter of E. C. Brown, the editor of The Progressive Age, dated the 12th of February, 1894, and that he had that letter in his possession.

And thereupon counsel for the plaintiff read in evidence to the jury the said letter, which was in the words and figures following, to wit:

"E. C. Brown, publisher. Established 1883.

Office of Progressive Age. Gas, electricity, water.

NEW YORK, *February* 12, 1894.

Washington Gas Light Co., Washington, D. C.

GENTLEMEN: I have watched with great interest the continued reports of the proceedings against your company as published in the local newspapers of your city, and I have been somewhat surprised at the character and extent of Mr. Lansden's testimony.

11 Was his statements correctly reported in the Washington Star of 3rd inst.? Newspapers all over the country are taking up his figures and using them to suit their own ends against home companies. Any information you would care to give us concerning the object of Mr. Lansden's attack will be considered confidential as to source of information.

Very truly yours, E. C. BROWN."

And thereupon the plaintiff, further to maintain the issues on his part joined, produced and read in evidence the deposition of a witness, E. C. BROWN, wherein the said witness testified that he is a

resident of the city of New York, is 27 years of age, and that he is an editor and publisher by occupation; that in February and March of 1894 he was the editor of a newspaper called The Progressive Age and was the president of the company publishing the same, which was called The Progressive Age Publishing Company; that he was the editor of the paper marked "T. G. L. No. 1," bearing date March 1st, 1894, and the president of the company which published the same; that the said publication is devoted specially to gas, and that it circulates generally throughout the United States; that the Washington Gaslight Company is a subscriber to said publication, "The Progressive Age," but that, to the best of his knowledge, none of the officers of said company are subscribers, and that but one single copy of said publication was se-t to the Washington Gaslight Company prior to April 12, 1894; that after the institution of a suit against The Progressive Age Publishing Company by Lansden for an alleged libel he, witness, sent five copies to the Washington Gaslight Company and none, so far as he knows, to other places; that none were sent on the order or request of the defendants herein named or any of them or of any agent or employé of the Washington Gas Light Company.

And thereupon, on cross-examination, the said witness testified that he regularly received newspapers from all over the country; that prior to the publication of the article in controversy concerning the testimony of the plaintiff as to the cost of making gas, articles had been called to his attention in the Washington Star during the continuance of the congressional investigation on the subject of the price of gas in Washington in February, 1894, in the Washington Post during the same time, the St. Louis Globe-Democrat, the Cincinnati Tribune, the Washington, Indiana, Gazette, the Buffalo (New York) Express, all during the same time, February, 1894, and others, which he does not now remember; that he had prepared a copy of his correspondence with the plaintiff Lansden subsequent to the first day of March, A. D. 1894, in regard to the article entitled "The acrobatic performances of Lansden," which he produced and was willing to deliver; that the plaintiff Lansden, on account of said article, had instituted suit against The Progressive Age Publishing Company for the sum of $50,000; that the suit was instituted April 12, 1894, and that the parties thereto were Thomas G. Lansden, plaintiff, and The Progressive Age Publishing Company, defendant; that the suit is for $50,000 damages for alleged libel in publishing the article entitled "The acrobatic performances of Lansden."

12

The said witness during his examination refused to answer the fourth, fifth, sixth, seven-, and eighth direct interrogatories and the second cross interrogatory. The said questions having been referred to the court and the witness being ordered to answer said interrogatories, he stated in answer to the fourth interrogatory, which is in the words and figures following, to wit:

"Fourth interrogatory. If the fact be, and if your answers to the previous questions so show, that you are the manager, editor, president, or proprietor of the publication a copy of which is thus ex-

hibited, look at the article entitled 'The acrobatic performances of Lansden,' which appears in the issue thus exhibited, and state whether the defendants, John R. McLean, Charles B. Bailey, William B. Orme, and John Leetch, or either or any of them, or any agent or employee of them or either of them, or any agent or employee of the Washington Gas Light Company, wrote, contributed, or furnished any letter, document, or written memorandum of any character which entered into or served as the basis of the said article, and if such document, writing, or memorandum be within your reach or subject to your control, produce the same in connection with this examination and file with this your deposition, and if such were once but are not now in your custody or control, state when, to whom, and under what circumstances you parted with the custody and control,"

Said witness answered as follows:

"After Mr. Lansden's testimony in the 1894 congressional investigation had been noted by me in various newspapers I wrote the Washington Gas Light Co, asking them to confirm certain statements that had appeared, and I received in reply to my letter the accompanying communication, which I now produce and file."

The original *is* produced is compared by counsel with the copy, and the copy found to be correct. Counsel for the witness declines to part with the custody of the original; which copy is in the words and figures following, to wit:

"WASHINGTON, D. C., *Feb.* 13, 1894.

E. C. Brown, Esq., publisher Progressive Age, 280 Broadway, N. Y.

DEAR SIR: I have just now received yours of the 12th instant, relative to the statement made by Mr. T. G. Lansden, former sup't of the Washington Gas Light Company, before the investigating committee of Congress to reduce the price of gas in this city.

As Mr. Lansden is no longer in the employ of the gas company, the motive was generally understood that prompted his statement.

As the newspapers in Washington gave a correct version of his statement, there is no doubt he said that gas could be furnished at the meter for seventy cents, and to the consumer for $1.00 per 1,000 cubic feet. This price at the meter was exclusive of repairs, services, etc.

Under a former resolution of Congress, bearing date of Feb-
13 ruary, 1893, Mr. Lansden was called upon to answer certain questions bearing upon the reduction of price of gas in Washington and made the following replies:

"'Q. What does gas cost to manufacture at your works?

A. It costs us 48.38c. per thousand in the holder and 40.09c. per thousand for distribution.

Q. Can you in any way reduce the cost of gas in the manufacturing, so your company could sell for less to the consumer?

A. I know of but one way that a small amount could be saved—that is, by reducing the salaries of our clerks and the price paid to our laborers. This we would not like to do.

Q. How do the prices charged for lamps in Washington compare with other cities?

A. They are as low as any where the same amount of gas is burned to the lamp and the same number of hours lighted in the year, and when the company lights and cleans the lamps.'

You will notice that he makes a difference of about 18½ cents per 1,000 feet then as compared with his statement now, although he must know that the material used, coal, and labor is just the same now as then, except price of nap-tha, which is higher. You can try to reconcile the two statements.

Very truly yours, JOHN LEETCH,
General Manager."

To the fifth interrogatory, which is as follows:

"Fifth interrogatory. State whether writings or memoranda of any description affording facts, suggestions, material, or assistance of any kind in or for the preparation of the article in question were furnished to you or the 'Progressive Age' by either or any of the parties above named, or by any agent or employee of them or either of them, or by any agent or employee of the Washington Gas Light Company; and, if so, produce the same and state by whom they were furnished and file with your deposition,"

He says:

"None whatever, other than that named in my answer to the fourth direct interrogatory. I received a copy of the report of the congressional investigating committee. By whom it was sent I do not know. I presume it came from one of the defendants."

To the sixth interrogatory, which is in the words and figures following, to wit:

"State whether any paper or written memorandum purporting to be the writing of Mr. Lansden, or represented so to be, was either filed with or exhibited to you or any officer or agent of the 'Progressive Age' as evidence of testimony that had been given by him in 1893; and, if so, state who filed or exhibited the same and where the same now is. Produce and file the same with your deposition if subject to your control,"

He says:

"I have no knowledge of such paper prior to the beginning of the suit against the Progressive Age Publishing Company for alleged libel. No such paper is in my control."

14 Counsel for the plaintiff presses for further answer, and the witness answers:

"No."

To the seventh interrogatory, which is in the words and figures following, to wit:

"State whether any writing or memorandum prepared by Mr. Lansden on the subject of the price at which gas could be produced in Washington or any writing or memorandum on that subject represented to have been so prepared was furnished or exhibited to you or the 'Progressive Age' by either or any of the defendants above named, or by any agent or employee of them, or by any agent

or employee of the Washington Gas Light Company; and, if so, state by whom the same was furnished or exhibited and where the same now is, and produce and file with your deposition if in your custody or subject to your control,"

He answers:

"Only as I have testified to in answer to the fourth interrogatory."

To the eighth interrogatory, which is:

"State what information, if any, was furnished orally by the defendants above named, their agents or employees or any of them, for the preparation of the said article, or by any agent or employee of the Washington Gas Light Company. Rehearse fully the connection, if any, which subsisted between the parties here described, or any of them, and the said article,"

He answers:

"No oral communication whatsoever."

To the second cross-interrogatory, which is as follows:

"State whether defendants or any of them requested or solicited publication in the 'Progressive Age' at any time of any information or statement relating to the plaintiff in any manner,"

He answers:

"They never did."

And thereupon, further to maintain the issues on his part joined, counsel for the plaintiff read in evidence to the jury the following article from the Progressive Age, under date of March 1st, 1894; which article is in the words and figures following, to wit:

"*The Acrobatic Performances of Lansden.*

To a very recent date, assuming his St. Louis exploit to have been overlooked and pardoned, Mr. Thomas G. Lansden, late superintendent of the Washington, D. C., Gas Light Company, while doing nothing in particular to direct attention to his connection with the gas industry as a whole, has refrained from conduct that would lower him in the eyes and opinions of his coworkers or forfeit him the respect due a man of Mr. Lansden's years and former position in the business.

A congressional committee has been investigating the Washington Gas Light Company. Complaints were lodged by some
15 of the patrons of the company with the Committee on the District of Columbia, which has jurisdiction in all matters affecting affairs connected with the capital city, and Congress ordered an investigation. Many witnesses have been heard on both sides of the question, and among them appeared Mr. Thomas G. Lansden, who had filled the position of superintendent with the company for a period of seven years prior to his resignation, in June of last year. This gentleman did not come forward, as might have been expected, to render such help as he could to assist his former associates over their present difficulties and to say a good word in behalf of the company with which he had so long been

identified and by which he had been most generously requited; on the contrary, Mr. Lansden has arrayed himself within the ranks of those who sought to tear down and lay waste the business and emoluments of his former employers. Moreover, by reason of the nature of his testimony, Mr. Lansden has caused a report of his statements to be circulated the length and breadth of the land, and the subject-matter contained therein is well calculated to do the utmost harm to gas interests everywhere. Mr. Lansden's statements, as made under oath before this investigating committee, have been telegraphed from one end of the country to the other, and newspapers in many of the principal cities throughout the United States have copied the statements which have appeared in all Washington papers during the progress of the investigation. To what extent is best shown when we say that more than a score of newspapers containing Mr. Lansden's statements about the cost of making and distributing gas have come to our notice since his testimony was given, and the end is not yet. The figures of cost supplied by Mr. Lansden are startling, to say the least, and more than one gas company will, we apprehend, ere long find itself confronted with his figures and compelled to battle hard in an effort to overcome the bad effect on the public mind.

It is because of the general interest that is likely to suffer for Mr. Lansden's indiscretion that we give heed to the matter, not through a desire to extend special favor to the Washington company; nor it is because of any ill will entertained by us for Mr. Lansden. If the cause of the company is just, as we believe it to be, it will come out of the investigation a victor. The present investigation is not the first in which Mr. Lansden has appeared as witness. Only a year ago a similar inquiry, emanating from the same quarter, was instituted against the Washington Gas Light Company. Then Mr. Lansden appeared as a witness in behalf of the company. He at that time occupied the position of superintendent with the company. His testimony then and that of this year are so badly at variance that we should be remiss in our duty if we permit the occasion to pass without directing attention to these differences. Moreover, we should be guilty of withholding from gas managers information which will be of material assistance to them in breaking the force and effect of Mr. Lansden's recent statements.

Under a former resolution of Congress bearing date of
16 February, 1893, Mr. Lansden was called upon to answer certain questions bearing upon the reduction of price of gas at Washington. We herewith give the questions propounded to Mr. Lansden during the investigation of last year and his replies thereto. This we follow with the interrogatories put to him and his answers during the present investigation.

Lansden in 1893.

"'Question. What does gas cost to manufacture at your works? Answer. It costs 48.38 cents per thousand in the holder and 40.09 cents per thousand for distribution.

Q. Can you in any way reduce the cost of gas in manufacturing, so your company could sell for less to the consumer?

A. I know of but one way that a small amount could be saved—that is, by reducing the salaries of our clerks and the price paid to our laborers. This we would not like to do.

Q. How do the prices charged for lamps in Washington compare with other cities?

A. They are as low as any where the same amount of gas is burned to the lamp and the same number of hours lighted in the year and when the company lights and cleans the lamps.

Lansden in 1894.

Q. From your knowledge of the business and condition of affairs here, at what price could the gas company sell gas and pay a reasonable profit?

A. Well, sir, I think they can sell it at $1 a thousand. That is the reason I came before this committee. I am a gas-consumer today, and I have had a good deal of experience, and I think it to the interest of the gas company to stop all these troubles, and they should put the price down to $1 a thousand and stop the annoyance. They should make good gas and put the price down to $1.

Q. Will it stop the complaints?

A. Not entirely. You never will do that. * * *

Q. What is the result of your experience, if you are able to submit a statement to the committee? Leaving out of consideration the interest on investment and plant, etc., what is the actual cost per thousand for the production of gas in the city of Washington?

A. Do you mean what it can be made for?

Q. What did you make it for under your management?

A. Without counting interest, you mean?

Q. Without counting the interest on investment.

A. It can be put in the holder, with the present modern machinery which the company has, for about 32 cents. With the proportion they are making now of water gas and coal gas, I think it ought to be distributed for 20 or 22 cents a thousand. * * *

Q. What is the next item of cost after putting it in the holder?

A. Distribution. After it is put in the holder it is drawn
17 out by the consumer, and then there is the expense of inspectors taking the statements, and running what we call the upper offices.

Q. What percentage of cost would that be?

A. I put that between 20 and 22 cents. * * *

Q. That would make this cost 54 to 56 cents per thousand?

A. Yes, sir; I think so.

Q. That includes office expenses?

A. Then come taxes and repairs, and I think it can be easily made inside of 70 cents, counting in repairs and taxes.

Q. Now, does that include everything except interest on investment?

A. Interest on investment comes in the shape of dividends, I consider.'

"From the foregoing extracts of this witness' testimony only one of two conclusions can be arrived at, and we are too sensible of the reader's power of analysis and feel too keenly for the witness to heap coals of fire on the head of one whom, it is only too evident, has allowed his sense of justice to be distorted by real or fancied grievance. The testimony given by Mr. Lansden in 1893 states in effect that there is no way open to his company by which it could reduce the cost of manufacturing gas. In 1894 he tells the committee that, taxes and repairs added—items not considered in the inquiry of the previous year—the cost of gas delivered to the consumer could be brought within 70 cents, or about 18½ cents less per thousand than he quoted as the lowest manufacturing and distributing cost the year before; and yet Mr. Lansden must know that the generating apparatus at the Washington works is the same as when he filled the position as superintendent; that the cost of all materials used, coal, and labor are just the same, save only naphtha, which is now higher in price than when he testified a year ago.

Every man must be the custodian of his own conscience, and it is not for us to decide how Mr. Lansden will reconcile himself to his present unhappy position. If the gentleman has given up all thought of again associating himself with a gas enterprise, possibly he is indifferent to the effect of his predicament, but if he still entertains an idea of continuing his former calling he should lose no time in setting himself straight in the eyes of his former associates. In view of the testimony, we can readily believe this will prove a most difficult undertaking; but there is always two sides to a story, and possibly Mr. Lansden may have in reserve some evidence that will enable him to sustain his present position. If so, our columns are open to him for such purpose."

And thereupon counsel for the defendants offered to read to the jury the correspondence between the plaintiff Lansden and the editor of the Progressive Age after the publication of the article hereinbefore set forth, as a part of the *res gestæ* and as explanatory of the position of the plaintiff in regard thereto; but the court refused to permit the said correspondence as a whole to be read in evidence to the jury, upon the ground that any correspondence be-
tween the plaintiff and the editor of this paper after the
18 publication of the article referred to could not throw any light
upon the issue; to which ruling of the court the defendants, by their counsel, then and there duly excepted.

And thereupon counsel for the defendants, with the consent of counsel for the plaintiff, read in evidence to the jury from the issue of "The Progressive Age" under date of April 2d, 1894, an article in the words and figures following, to wit:

"Thou canst not say I did it."

Denial from T. G. Lansden.

Progressive Age has received a letter from Mr. Thomas G. Lansden in which that gentleman takes exception to certain statements contained in an article which appeared in our columns for March 1st, entitled "The acrobatic performances of Lansden." Mr. Lansden says:

"That part of the article referred to beginning with the words 'the present investigation,' in the seventh line of the second column, on page 79, down to 'Lansden in 1894,' 35 lines below, in the same column, is absolutely false. I cannot have given the testimony charged, first, because I did not know of my own knowledge the actual cost of gas manufactured or distributed by the Washington Gas Light Company; second, because I did not appear as a witness before any such committee, on behalf of the company or otherwise; and, finally, because my best information, after inquiring, is that there was no such committee of investigation appointed or in existence in 1893.

Yours respectfully,

(Signed) T. G. LANSDEN."

Counsel for the defendants thereupon offered in evidence a letter from T. G. Lansden to E. C. Brown, president and editor of the Progressive Age Publishing Company, dated New York, March 21st, 1892, and the answer thereto by E. C. Brown.

And thereupon counsel for the plaintiff withdrew his objection to the introduction in evidence of the letters of the plaintiff Lansden, but insisted upon his objection to the letters of E. C. Brown, the editor, to the plaintiff.

And thereupon, upon the withdrawal of the objection of counsel for the plaintiff, the court admitted in evidence, on the offer of defendants, the letters from the plaintiff Lansden to E. C. Brown, the publisher of the Progressive Age; which said letters are in the words and figures following, to wit:

"To the Progressive Age Publishing Company, E. C. Brown, president and editor:

In an issue of the Progressive Age bearing date New York, March 1st, 1894, there appeared an article under the head-line of "The acrobatic performances of Lansden." That article concerns me and is a libel upon my character, and I propose to follow the matter up fully. I ask you to give me at once the name of the
19 author or authors of that article and his or their place or places of residence, together with all sources of your information concerning the facts stated in that article. I also demand that you make a full and immediate public retraction of the statements contained in that article which in any way reflect upon my character or conduct.

Dated New York, March 21, 1894.

T. G. LANSDEN.

Please send any answer you may make to 705 Temple court."

"NEW YORK, *March 23rd*, 1894.

E. C. Brown, Esq.

DEAR SIR: Replying to your communication of the 22d instant, I have to repeat the requests to which your letter is an acknowledgment, but not an answer, and also to point out to you wherein your journal has misstated the fact upon which you base your libel and in-uendo, viz:

I have no information—and desire it—respecting the 'St. Louis exploit' the article leaves to be inferred.

That part of the article referred to beginning with the words 'the present investigation,' in the seventh line of the second column, on page 79, down to 'Lansden in 1894,' thirty-five lines below, on the same column, is absolutely false. I could not have given the testimony charged, first, because I did not know of my own knowledge the actual cost of gas manufactured or distributed by the Washington Gas Light Company; second, because I did not appear as a witness before any such committee, on behalf of the company or otherwise, and, finally, because my best information, after inquiry, is there was no such committee of investigation appointed or in existence in 1893.

Yours respectfully, T. G. LANSDEN."

Telegram.

"WASHINGTON, D. C., *March* 31, 1894.

E. C. Brown, Progressive Age Pub. Co., 280 Broadway, N. Y.:

Publication proposed in your letter 26th inst. will not be accepted as any satisfaction if names of the authors of the scandalous statements complained of continue to be withheld.

T. G. LANSDEN."

"NEW YORK, *April 26th*, 1894.

E. C. Brown, Esq.

DEAR SIR: Your letter of April the 4th received. You state therein that 'the ethics of journalism prohibit the furnishing of the names of parties who offer newspapers information respecting matters that are published, and we cannot violate the established custom.' My object in demanding of you the names of those furnishing you the information upon which you based your article of March 1st, 1894, was to be fair with you and to give an opportunity to me to place the responsibility upon the shoulders where it should rest. Your 'ethics' restrain you, and it now remains to be determined if your rule of duty is in any high sense ethical. You further write, 'I would say to you that there is no author for the matter other than your own handwriting. Do you deny it?' I answer, decidedly, Yes; I do deny it. Now, let us be frank and fair. I have made the denial, and I defy you to produce any writing of mine which will sustain you in your assertions of March the 1st, 1894.

Please produce any such evidence as you claim to possess, and do not hide under simple assertions. I now give you an opportunity to do so and to have such pretended evidence submitted to the inspection of your representatives and mine at such an early date as you may fix.

Yours truly, T. G. LANSDEN."

"NEW YORK, *April 14th*, 1894.

E. C. Brown, Esq., president and editor Progressive Age.

DEAR SIR: Replying to your letter of the 11th inst., will say that I will name your office at 280 Broadway as the place and April 17, 1894, at 11 o'clock in the forenoon, as the time for the inspection of the paper mentioned in your last communication. I will attend at that time and place with my counsel and will meet your representative and you for the above purpose.

Yours truly, T. G. LANSDEN."

And thereupon counsel for the defendant- offered in evidence all the letters written by E. C. Brown in reply to the letters written by plaintiff, heretofore introduced in evidence; but the court overruled the said offer and refused to permit the said letters to be read in evidence to the jury; to which ruling of the court the defendant-, by their counsel, then and there duly excepted.

And thereupon, in explanation of his ruling in rejecting all of the letters from Brown to the said plaintiff, the court said;

"I want it understood that that is simply my ruling upon the letters as a whole. If you say there is any passage in any one of those letters that is material, I wish you would call it to my attention. I may find some passage there that is material, and I would not want to say that there is not some particular passage there that might be material. I will consider the ruling as a ruling upon the offer of all the letters together, because offering one letter and another and another is the same as offering them all together. If you find anything in any of these letters that you think material you can call it to my attention at any time during the trial."

And thereupon the defendants, by their counsel, offered to read in evidence to the jury a letter from E. C. Brown to T. G. Lansden, the plaintiff herein, dated March 22d, 1894; a letter from E. C. Brown to Thomas G. Lansden, Esquire, dated March 26,
21 1894; a letter from E. C. Brown to T. G. Lansden, dated April 4th, 1894; a letter from E. C. Brown to T. G. Lansden, dated April 11th, 1894; a letter from E. C. Brown to Thomas G. Lansden, dated April 16th, 1894.

Counsel for the defendant- offered to read in evidence what purported to be copies of the said letters to the jury separately and severally; but the court overruled the said offer and refused to permit the said letters to be so read in evidence to the jury; to which ruling of the court the defendants, by their counsel, then and there separately and severally excepted as to each letter; which said letters are in the words and figures following, to wit:

"NEW YORK, *March* 22, 1894.

T. G. Lansden, Esq., care room 705 Temple Court bldg., city.

DEAR SIR: I have your favor of the 21st inst. In reply thereto I would say that the issue of Progressive Age for the date March 1st contains an article entitled 'The acrobatic performances of Lansden.' Newspapers are responsible for their utterances. Neither this journal nor its publisher has desire to escape responsibility for its statements in connection with the article referred to by you. In response to your inquiry for the source of the editor's information and facts as stated in the said article, I would say that for the most part the same are matters of public record and you certainly must know where to search therefor.

In answer to your demand that this journal 'make a full and immediate public retraction of the statements contained in the article' above mentioned, I would say that if you will point out to me the manner in which this publication has done you injustice by the recital of facts and statements which appear in the article to which you object I will only too gladly make as full and satisfactory retraction as you may wish. You have only to inform me wherein we have fallen into error in the, to you, objectional publication to secure the most prompt acknowledgment on our part.

Furthermore, I repeat to you what was in effect published in the closing lines of the article of March 1, that Progressive Age tenders you gratis all the space you may deem necessary to give your version of the Washington affair, and, if accepted on your part, we will accord it the same prominence as was given to the former article.

Trusting that you will avail yourself of the suggestion just above made, or that you will, at any rate, point out to me wherein we have done you injustice, that I may become acquainted with the particulars of said article to which you take exception and for which you demand retraction, I am,

Very truly yours,

E. C. BROWN."

"NEW YORK, *March* 26, 1894.

Thomas G. Lansden, Esq., care 705 Temple Court, city.

DEAR SIR: Replying to your letter 23d inst., I beg to say that Progressive Age in its next issue (April 2) will publish that portion of your letter of 23d which constitutes your denial of certain statements contained in our article of March 1 to which you have taken exception.

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Thanking you for bringing the matter to our attention, thus enabling me to make public your refutation of such portions as you object to, I am,

Very truly yours,

E. C. BROWN."

"NEW YORK, *April* 11, 1894.

T. G. Lansden, Esq., care 705 Temple Court, N. Y. city.

DEAR SIR: Reply to your letter of the 6th inst. has been delayed because of the writer's absence from the city.

In answer to your request to submit a certain document which we claimed was written by you, bearing out certain statements which we have accredited to you, I would say that I am prepared to accept your challenge, and will allow you to name the time and place where said document, the authorship of which you deny, can be submitted to our respective representatives to establish its genuineness.

Very truly yours, E. C. BROWN."

"NEW YORK, *April* 16, 1894.

Thomas G. Lansden, Esq., care 705 Temple Court, city.

DEAR SIR: Your letter of the 14th inst. was handed in at my office this morning by your messenger.

My letter of the 11th inst., in which I expressed willingness to submit to our respective representatives a certain document for the purpose of passing upon its genuineness, was written, as I informed your process-server, before I was served in your suit. Moreover, your process was in the hands of your man for service upon me on as early as the 9th inst., although I was not aware of that fact until after the process-server had departed, after having served his paper upon me.

I wish now to assure you that had I known that you had taken action at the time I last wrote you (11th inst.), I should not have made the proposition contained in said letter. In view of your action, I respectfully decline to exhibit the document until the trial of the case.

Any further communication you may desire to make to me relative to the controversy between us you will please address to my counsel, Hon. Charles E. Lydecker, Equitable building, 120 Broadway, city of New York.

Yours truly, E. C. BROWN."

The defendants excepted to the overruling of their offer in evidence of the letters of said E. C. Brown in answer to the letters of Thomas G. Lansden, admitted in evidence on their offer and consent of plaintiff, on the ground that these letters of Brown were part of the *res gestæ* in the case, and that the reading of one part of a correspondence to a jury without the answers thereto being read tended to confuse the jury and injure the case of the defendants, and on the further ground that the letters themselves, when offered in evidence as a whole and singly, would tend to show the responsibility of the editor of the paper and the absolute lack of responsibility on the part of these defendants.

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But before any of the letters of Lansden were read in evidence counsel for the defendants were informed by the court that the mere fact of the admission of those letters would not entitle them to put Brown's letters in evidence if objected to.

And thereupon the plaintiff, THOMAS G. LANSDEN, further to maintain the issues on his part joined, testified in his own behalf that he was a resident of Washington and had been such since 1886;

that, prior to that time, for 11 years he resided in St. Louis, Missouri; that he is a gas engineer by occupation; that a gas engineer is a man who constructs and manufactures gas works and manufactures gas; that he had been so engaged for about 30 years, mostly in the West; that he had constructed works through Illinois, Iowa, Wisconsin, and Missouri; that, before coming to Washington, he was engaged in gas works at St. Louis, which place he left to take charge of the Washington gas works; that during the 11 years of his residence in St. Louis he was connected with the gas works as engineer and superintendent of the St. Louis gas works; that he was solicited to make application for the position with the Washington Gas Light Company; that a position was offered to him here and he came on to Washington to have a talk with Mr. McIlhenny, and he thereupon made arrangements to come here; that he came here because he was offered the position of superintendent of the Washington Gas Light Company; that he held that position from 1886, November 1st, until the first of June, 1893; that he belonged to the gas association and organized the western association, which is one of the largest associations; that he had never had any trouble with any of them; that they were all friends of his, so far as he knew; that prior to March 1st, 1894, he never was out of a position; that he knows of a publication called The Progressive Age and has read the article therein in the issue of March 1st, 1894, headed "The acrobatic performances of Lansden;" that a copy of the paper was sent to his house, while he was absent, through the mail; that it was nearly a month after it was published before he saw it; that he knows John R. McLean, who, during February and March of 1894, was the president of the Washington Gas Light Company; that he knows Charles B. Bailey, who was, during the same period, the secretary of the Washington Gas Light Company; that William B. Orme was the assistant secretary of the Washington Gas Light Company, and John Leetch was the general manager of the Washington Gas Light Company; that Mr. Leetch became connected with the defendant company in March or April, 1893; that he is unable to state what the reference "until a very recent date, assuming his St. Louis exploit to have been overlooked and pardoned," refers to; that he never had a word with anybody in connec-
24 tion with the St. Louis Company; that his severing of his connection with the company in St. Louis was entirely voluntary, and that the president of that company held his resignation for four months after he supposed it had gone in; that at the first meeting of the board of the St. Louis Gas Company, after he came here, a letter was written to him, without any request on his part, of a complimentary character.

And thereupon counsel for the plaintiff called the attention of the witness to an extract from a letter written by Mr. Leetch, general manager of the Washington Gas Light Company, under date of February 13th, 1894, as follows:

"Under a former resolution of Congress, bearing date February

8th, 1893, Mr. Lansden was called upon to answer certain questions bearing upon the reduction of the price of gas in Washington."

Thereupon the said witness testified that he never was before any committee in 1893 in regard to the investigation of the Washington Gas Light Company in regard to the price of gas or anything of the kind; that he did appear before a committee of Congress in 1894, which was the only time that he ever appeared before a committee; that in 1893 Mr. McLean, the president of the company, attracted his attention one morning to the sundry civil appropriation bill that was being gone over by the House.

And thereupon, in response to interrogatories propounded by counsel for the plaintiff, the said witness testified as follows:

"Q. You can only tell what Mr. McLean said to you?

A. Mr. McLean was telling me this, and that a resolution to put the price of gas used by the Government here down to 75 cents a thousand had been passed. He told me that he wanted me to go before the committee. He said, I don't know what kind of a witness you would make, but I wish you would write me out something here by which I could get up some questions to give a committeeman to question you on. I went to my office and sat down with my pencil and wrote out a series of questions and answers—'What is your name?' and my experience and all this and that. I carried it up to the office, and Mr. McLean read it over. He said, You say nothing here about the price of gas—the cost of gas. I said, If they ask me that, that must come from you. He went into Mr. Bailey's office and brought out some figures. They were put down in the memorandum, towards the latter part of it, in cents and hundredths of cents, which, as I had never seen the books of the company as to the cost of distribution, &c., I could not possibly have given of my own knowledge at all.

Q. Why did you tell him that the items of cost must come from him?

A. Because he and the secretary are the only ones that know anything about it. The engineer and superintendent, unless he has charge of those books, never knows the cost of gas.

Q. I hand you a paper produced by the other side and ask you whether that is the memorandum to which you refer.

25 A. That is it. There is no date to it. It is on my office paper at the gas works.

Q. In this memorandum the cost per thousand, as stated, in the holder appears to be put at 48.38 cents.

A. Those were figures that were given to me by Mr. McLean.

Q. What data or material had you for getting down to the hundredths part of a cent?

A. I have no books in my office at all that give the exact cost of gas. I can approach it closely at the works by knowing what my labor is a day and what amount of coal is used; but there are hundreds of little bills that come in that I certify to at *at* the end of the month, and they are all concentrated in the books at the prin-

cipal office; so that to get at the actual cost of gas a man must have control of the books.

Q. In this paper the cost of distributing is put at 40.09 cents. What had you to do with the cost of distribution?

A. I never saw the books. It is only my general knowledge of what I think it ought to cost."

And thereupon the said witness, in response to interrogatories propounded by counsel for the plaintiff, testified that his experience, from having had charge of gas works and of distribution, would enable him to approximate the cost of production; that he had no way of bringing it down to the exact cost, but could do so approximately; that what is called the cost of the manufacture of gas is the cost of putting it into the large gas-holders; that the cost of distribution is the cost of the work from the time it is drawn out of the holders until the gas bills are collected, including office expenses, salaries of clerks, street mains, service pipes, meters, etc.; that when the data as to cost was handed to him by Mr. McLean he said to Mr. McLean, "It cannot be possible that your gas costs that much;" that Mr. McLean said they were entitled to charge interest on the investment, and the witness then said, "It don't make any difference to me. If the committee asks me, I will give them to them as your figures;" that it would be very hard to state to the jury the effect upon him of this publication; that he never had a word with the company, and, as far as he knows, his record as an upright, straightforward man in business has stood up until the present time; that he has never before been charged with perjury; that he made no effort to get a position until almost a year, in consequence of the sickness of his wife, who was seriously ill and died about that time; that after her death he answered three or four advertisements for positions and received no answer from any of them; that he opened an engineer's office in St. Louis, where he had been accustomed to building works, and had never had any applications but one, from parties for whom he had charge of works 25 years ago; that the publication of this article affected him mentally; that a man of his age, having the reputation that he had, would naturally feel in an unpleasant condition, in consequence of such a publication, until he could meet it; that in the evidence he gave
26 before the committee in 1894 he had no feeling against the company; that after he left the employ of the gas company he used to go to the office, and that his mail came there for quite a length of time; that he did not go before the committee in 1894 for three or four weeks after the investigation was going on, and that he did not go until the last day of the committee and then at the solicitation of certain parties; that he believed that, being a resident, he had the privilege of going before the committee when citizens were invited to come, and that he did go before the committee in 1894.

And thereupon, on cross-examination, the said witness, in response to interrogatories propounded to him by counsel for the defendant-, testified that the memorandum which he had examined

was all in his own handwriting; that he gave the said memorandum to Mr. McLean, at his request.

Counsel for the defendant- thereupon gave in evidence the memorandum above referred to, which is in the words and figures following, to wit:

"Name: —— ——.

Occupation: —— ——.

How long have you been connected with the Washington Gas L't Co.?

Six and a half years.

Have you had other experience with gas Co.'s before coming to Washington?

For the ten years previous to coming to Washington I was eng'r & sup't of the St. Louis Gas Co., and for the twelve years previous to that I was building and run-ing gas works throughout the West.

Are you familiar with the prices and quality of gas furnished by the leading cities of this country?

I am. I have visited the works of every city of size throughout the United States.

How do the works and methods of manufacturing gas at the Washington Gas L't Co. compare with works and methods of other cities?

They are equal to any and superior to many of those of other cities.

How do the prices charged by the Washington Gas L't Co. compare with prices charged by the companies of other cities?

They are as low as any city where material for making gas is of like cost. Some of the cities get material for less than one-half the cost it is to our company.

Name some of the cities so favored.

Cincinnati and Cleveland, Ohio.

What city or cities furnish the highest C. P.?

New York city, I think, furnishes about as good gas as is made in this country.

How will the gas supplied by your company compare with New York?

I think we make as good gas as is made in any city. The methods of testing in Washington are different to other cities.

27 What is the price charged for gas by the leading cities of this country?

New York charges	125
Philadelphia	150
Baltimore	125
Chicago	125
St. Louis	125
Boston	125
Washington	125

What is the material used for making gas in Washington?

Coal and nap-tha oil.

What is the material used in other cities?

New York principally oil; some coal.

Philadelphia, oil & coal.

Baltimore, oil; Chicago, oil; St. Louis, coal and oil; Boston, oil mostly.

Has there been much complaint of your gas at your office recently?

There has been complaint within the past few weeks during the cold weather of about one-half per cent. of our consumers. What they generally call bad gas is a want of pressure occasioned by the excessive cold weather.

What effect does the cold weather have on the gas?

All illuminating gas, by whatever *known method* made, contains an aqueous vapor. When the pipes are exposed by crossing ar*ies* or otherwise, this vapor forms a fine frost on the inside of the pipes, which checks the flow of gas. A greate many of our meters are exposed, as we have no inspection in Washington. The gas-fitters usual-y set the meters where they please.

Ail other cities have inspection of gas-fitting?

Washington is the only city where gas is used that has no inspection.

Do you receive daily notice of the quality of your gas from the United States inspector?

Yes.

Do these reports show you are complying with the law?

They show we are doing much better than the law requires. They sometimes show four-candle power over the standard, and for the past two or three years the average has been over two candles above the requirement.

Do you make any difference in the quality of the gas furnished during the session of Congress to that furnished when Congress is not in session?

We never have, but this winter, since Nov. 1st, our new management instructed me to make the best gas I could. We have, since Nov. 1st, when our new plant was put in action, made a better candle power than before, but this is purely a business matter for competing with electricity; we will not reduce the candle power when Congress adjournes.

28 Was there not complaint of your gas before Congress met this winter?

About the 1st of Nov., when we started our new plant at 26th & G Sts. N. W., we had, for a few days, some trouble. As the process was new, it took our men a few days to learn how to handle it, yet at no time did we go below the standard.

What does gas cost to manufacture at your works?

It costs us 48.38 per thousand in the holder and
40.09 " " for distribution.

Can you in any way reduce the cost of gas in the manufacturing so your company could sell for less to the consumer?

I know of but one way that a small amount might be saved. That

is by reducing the salaries of our clerks and the price paid to our lavorers; this we would not like to do.

How does the prices charged for lamps in Washington compare with other cities?

They are as low as any where the same amount of gas is used to the lamp and the same number of hours lighted in the year, when the company lights and cleans the lamps."

And thereupon the said witness, in response to interrogatories propounded by counsel for the defendant on cross-examination, further testified that, in order to make the answers contained in said paper, he never looked at the books in the office; that the memoranda were written up for Mr. McLean to get up some questions from, and that the item in the back of the paper, where the price was put down, was furnished by Mr. McLean; that everything in the said paper comes from his own experience with the exception of the items as to the cost of gas; that it was a paper never to be seen by anybody but Mr. McLean, and he does not recollect what was in it; that it was to be used by Mr. McLean as a guide to get up questions to go to a committeeman in Congress; that what Mr. McLean put in he does not know, and what he left out he does not know; that he is willing to have the whole paper read to the court; that the statement in the paper, "it costs us 48.35 cents in the holder and 40.09 for distribution," came from the books in the office; that the item in regard to what it cost for distribution came from the books, and that if he had been required to make it as an expert he could not have put it to a hundredth of a cent; that he never saw the books from which those items came before or after he left the service of the company.

And thereupon the following took place:

Q. The question here is "What does gas cost to manufacture at your works?"

—. "It costs us 48.38 cents per thousand in the holder and 40.09 for distribution."

—. Where did the item in regard to the cost per thousand in the holder come from?

A. It came from the books in the office.

Q. And the item in regard to what it cost the holder for distribution?

29 A. Certainly, because I never knew. If I had gone to make it as an expert, I should certainly not have put it in hundredths of cents, you know.

Q. Did you ever see those books from which those items came?

A. Never, sir.

Q. Did you ever see them after that time?

A. Never.

Q. Did you ever see them after the time you left the company—these books from which these items were taken?

A. No, sir; I never did.

Q. To the best of your knowledge, then, that was true at that time, was it not?

A. I don't know anything about the cost of gas. It is, to the best of my knowledge. The figures were furnished me, because when I wrote the paper the figures were not in it. It took it up to the office, and Mr. McLean said, You have got to have something about the cost of gas. I told him he must furnish those figures himself.

Q. When this paper was made up by you did you expect to be called before an investigation of Congress?

A. Yes, sir.

Q. And testify under oath?

A. If the committee called for it under oath. Some were statements and some were under oath; but I did not expect to have that paper handed to a committeeman, because it appears on its face that it was not intended for a committeeman.

Q. Did you not say you were to get up a copy of questions to be propounded to you?

A. That is what Mr. McLean said he wanted to do.

Q. Did you not expect these same questions would be asked you?

A. The most of them I expected; yes—if they were the kind that satisfied him.

Q. Did you not expect to give the answers that are written down here in your handwriting?

A. Yes, sir.

Q. They are true, are they not?

A. I expected to give them if they were asked for.

Q. They are true, are they not?

A. Those in regard to the cost of gas—I especially spoke of that.

Q. I ask you are the other answers that you give to these questions here true?

The COURT: He means the answers other than those in relation to the price.

A. If you read the questions I can tell you.

Q. You testified here that you told Mr. McLean that if you were asked on that investigation you would have given those figures. Is that so?

A. Certainly. I would say that is what is furnished me by the president of the company or the secretary, not of my own knowledge. I have always testified before every committee I was ever before in my life, except where I had charge of the books, as an expert.

The COURT:

Q. You would estimate the cost instead of giving the actual cost?

A. Certainly, sir; I have never in my life given the actual cost of gas before any court or investigating committee of any kind.

That he left the gas company on the 1st of June, 1893; that after Mr. Leetch had been with the company about a month plaintiff asked the privilege of taking his wife to New York under the

advice of his physician; that she was dying with an incurable disease, and he asked for a vacation of a month; that after his return from his month's absence Mr. McLean called him in and said, "Lansden, there are a dozen situations open to you. I see what unpleasant surroundings you have, and I thought if you would just tender your resignation I would give you a check for about two thousand dollars." I said to him, Discharge me. He said, "No: I never would discharge you." I said, "That is only whipping the devil around the stump; give me your check and I will give you my resignation, but I will say nothing about the unpleasant surroundings;" that he did not ask for three months' salary on account of his wife's sickness; that he never saw the books containing the figures as to the cost of distribution of the Washington Gas Light Company; that when he testified before the investigating committee in 1894 he did not testify to what they did, but to what he believed as an expert, and from his knowledge of the St. Louis works, where he had charge of the distribution, could be done; that the distribution in St. Louis cost 25 cents, which was thought high there, and that he, witness, testified that distribution could be done for about 20 to 22 cents; that before that committee he did not give the figures of the Washington Gas Light Company and did not purport to do so; that he testified before the committee he was a consumer of gas and had been such for many years, although he was not paying gas bills while in the employ of the company; that he had a talk with Mr. McLean once for a few minutes about reducing the price of gas; that he knew no more about the actual cost of the distribution of gas in 1894 than he did in 1893; that Mr. McLean never asked him to prepare a paper of questions and answers, but did tell him to write up a paper in order to have something to go by, and he got it up in that shape of his own accord; that Mr. McLean said he wanted it for some party who was getting up some questions; that he did not know what kind of a witness witness would make and requested him to write out a paper of some kind and show it to him; that he, witness, wrote it out in pencil just as it stands there and gave it to Mr. McLean; that he, witness, was not before the Senate appropriation committee with Mr. McLean in 1893, or before any subcommittee; that when the said paper was brought to Mr. McLean the question as to the manufacture of gas was not in it; that the cost of gas was given to him
31 either before he wrote the paper or before he finished it; that when he brought the paper up the remark was made that they would ask him about the cost of gas, and he said, "Then it must come from you;" that they furnished it to him and he put it in there in pencil like all the other questions; that in answer to the question, "Can you in any way reduce the cost of gas in the manufacture so that your company could sell for less to the consumer?" he wrote the answer, "I know of but one way that a small amount might be saved and that is by reducing the salaries of our clerks and the price paid to our laborers, and this we would not like to do;" that that question was not written before the question as to the cost of the distribution of gas; that at the time of writing

that answer he believed gas could be made for less than those figures, according to his private opinion; that at that time the new improvements at the old works were not completed; that he did not know of any other way to reduce the cost, because it could not be made cheaper with the machinery he had; that in 1894 different machinery was put in at the G Street station, which was started some time in the spring of 1893, and had only been running a short time; that in his evidence before the committee of Congress he stated that gas in 1894 could be made for a certain price, and that he then had reference to the complete machinery in both stations, and said that with the present modern machinery gas could be made in Washington for a certain price; that the basis upon which he made his answer to the committee of 1894 was upon the change that had been made in the works, and it could in 1894, in his opinion as an expert, be made cheaper than prior thereto; that he had learned nothing in regard to the distribution of gas between 1893 and 1894; that he had not seen the books and had no talk with anybody and no information at all; that what he said about the cost of distribution of gas in 1894 was based upon his experience; that in 1894 he testified before the committee of Congress that, without counting interest on the investment, gas, with the present modern machinery which the company had, could be put in the holder for about 32 cents, and that with the proportion they were making of water gas and coal gas it could be distributed for from 20 to 22 cents a thousand; that this was his opinion as to what it could be made for in 1894, due to the change in machinery and not due to any change in the reduction of salaries, the payment to laborers, or to any improved form of distribution; that after he severed his connection with the defendant company he went back to the office, mostly to the lower office, where the complaint department and distribution office were; that he had left orders to have his mail left there and called and got it; that he knows H. J. Entwisle, a young man who had charge of the distribution in the office at that time, but that he did not talk to him about leaving the gas company; that he did not say to him the gas company had got the best of him now, but that he was going to meet them on the hill in the winter time; that he knows R. W. Falls,
32 who worked in the office; that he did not say to him that he was going to fight the gas company on dollar gas and would bring gas down to a dollar, that he would meet them on the hill; that he may have said to him that gas should be reduced; that they did not get the new machinery finished at the G Street station until late in 1892; that they started, he thinks, but were not successful and did not run in 1893 for any length of time with the new improvements; that they could make gas cheaper with the new improvements than they could before they were put in; that he left in 1893, and that the machinery at the G Street station was working at that time; that he left on June 1st, 1893, and they stopped it immediately after he left and made a change; that it lay idle for several months; he don't know how long; that the new machinery is what is called the Wilkinson process, and it

did not work well; that they got it started late in the winter of 1892 and it was laid off for a while; that they tried to get along with it until the spring or summer time in order to make changes; that it was not working successfully; that he believed it was an economical process; that he based his statement of the cost in 1894 upon the machinery that the gas company owned, and said that they could afford to make gas at so and so; that when he wrote the questions and answers for Mr. McLean and said that it could not be manufactured any cheaper he meant to say he could not manufacture it any cheaper than it was manufactured; that he wrote those answers some time in the latter part of January, 1893, after a resolution had been offered to reduce the price of gas to 75 cents—a day or two after that; that after he left in June, 1893, he had no opportunity of testing that machinery to find whether it was working successfully or not; that the machinery was an exact duplicate of what he had been running for four years at the new works; that in 1894, when he appeared before this committee of Congress to testify, the machinery at the G Street works had not been in operation for several months; that it had not been working for some time after the spring after he left; that he presumed it was working successfully, but did not know; that he passed there and saw the thing working, but did not go into the works; that he did not have any of the figures in regard to the cost; that his testimony before the committee of Congress was as an expert and was his opinion as to what gas could be made for with the machinery they already had; that the time he testified before a congressional committee in 1894 he testified to what he thought gas could be distributed for, and that he based his knowledge of the cost of distribution on his knowledge of the distribution in the St. Louis works that he had had charge of; that witness had been told by the secretary of a large gas works that his distribution was as low as 16 cents in one of the large gas works in the United States.

And thereupon the witness further testified that when he got the check from the gas company he received the money for it; that part of it was for salary that they owed him, but he does not recollect how much.

And thereupon the witness further testified that he did not
33 know the actual cost of manufacturing gas in 1893; that he never knew that; that he never saw the books; that the upper-office books would give that; that he could approximate the cost of manufacturing gas—the cost of it in the holder—in this way: He knew the cost of the coal, the oil, and the labor, by the month; that his bills for gas-fitting and labor bills, which is sometimes $30, $40, $50, and sometimes up in the hundreds of dollars for material that they would buy, that came to him; that he would certify these bills and take them to the upper office; that he had no books of entry, but these items would go in as the cost of gas; that he never knew the actual cost of it, and could not know it unless he had access to the books of the company or unless he had charge of the books of the company; that he could approximate very closely to what it cost in the holder while he had charge of the

different places; that he had read the charge in the Progressive Age, which constitutes the charge of libel in this case; that he read the article in that paper containing this sentence: "In view of the testimony we can readily believe this will prove a most difficult undertaking. But there are always two sides to a story, and possibly Mr. Lansden may have in reserve some evidence that will sustain his present position; if so, our columns are open to him for such purpose;" that the only explanation he made to the editor of the Progressive Age in regard to the testimony that he had given before the investigating committee in 1894 was the letter to Mr. Brown; that that is the only time he denied he went before any committee; that he denied in that letter that he knew the actual cost of gas, and also said that, to the best of his knowledge, he did not know there was any committee investigating the gas company in 1893; that the persons at whose request he appeared before the committee were not members of the gas company; that he appeared of his own volition and at the request of certain parties after the examination had been going on for several weeks.

And thereupon said witness further testified on redirect examination that he cannot tell how early after the original libel of March 1st he wrote this letter of explanation, which appeared in the issue of April 2d; that he did not wait as long as a month to enter his denial, but they followed one right after the other. There were ten or fifteen of them; that the paper is published twice a month, and it was following the second letter—a day or two after he made the attempt to get the names of the parties who furnished the original information; that when he wrote the alleged answers he made no estimate of the cost of putting gas in the holder in 1893; that he got that from the president of the company; that the statements in these answers were given to him by the president of the company, and when he gave them to him he, witness, said, "It can't be possible that gas costs that much, but it don't make any difference to me. If the committee asks me any questions, I will give it to them as your figures;" that if called as a witness he would have given these figures as coming from the president of the company, and would have supposed they were correct; that Mr. Leetch
34 was not connected with the gas company at the time these answers were written; that when he (witness) left the employ of the gas company he was general superintendent and was employed by the year; that he came there on the first of November, and that his year was up on the first of November; that the amount of money that was paid him when he left did not pay his salary up to the end of the then current year; that he did not give a copy of the answers to anybody else but Mr. McLean, and gave them to him in his private office; that he never saw them again until he saw them here on this trial; that when he spoke of the new works being a duplicate of the old works he had reference to the process of manufacturing gas; that what he called the new works was out by the navy yard; that they put in a process there that had never been used before in Washington; that after they ran them for three or four years then they put in

a duplicate of the new machinery in the old works, on G street; that it was put in in 1892, but it was not completed until along in November some time; that in 1892 it was no longer a new process, but it was simply a copy of what they had in the works at the navy yard; that it was or intended to be identically the same machinery that they were using at the new works.

And thereupon the said witness further testified that his salary as gas engineer was $5,000 a year; that he received this amount in St. Louis for 8 or 10 years before he came here for the same salary he was receiving in St. Louis; that he was with the company here for about 7 years; that he came here on the first of November, 1886; that he had been receiving $5,000 a year for 17 or 18 years before this article was published.

And thereupon the following questions were propounded to the said witness, and he answered them as follows:

By Mr. DARLINGTON:

Q. What knowledge have you of the financial condition of the Washington Gas Light Company?
A. All the knowledge I have is the dividends they pay.
Q. Are you a stockholder?
A. I am not now.
Q. Have you been?
A. I have been.
Q. Were you one in 1893 and 1894?
A. Yes; I had some stock in 1893 and some in 1894.
Q. What is the total capital stock of the company?
A. Two million dollars is what it is capitalized for.
Q. Two million dollars?
A. Yes, sir.
Q. What dividends have been paid on the stock within your recent knowledge?

Mr. WEBB: We object to the extent of this examination. It is perfectly well known that the gas company is able to pay the amount claimed in this libel case, and what dividends they pay is a matter private to the company.

35 Mr. DARLINGTON: I am seeking to show only its earning capacity.

Mr. WEBB: We will admit that the company is able to pay this amount claimed.

The COURT: Still they have the right to show the volume of the property of the company, and any evidence tending to show the volume of the property would be competent.

To which ruling of the court counsel for the defendants then and there duly excepted; which exception was then and there noted upon the minutes of the court.

And thereupon the said witness was asked the following questions:

(By Mr. DARLINGTON:)

Q. You can tell us what you know in regard to the dividends earned on this stock in the last two years. What were the regular dividends?

A. They paid a regular dividend of 10 per cent.

And thereupon counsel for the defendant interposed an objection to the said question being asked on the ground that it was immaterial and irrelevant, and to any answer thereto being given to the jury; but the court overruled said objection and permitted said question to be asked and answered; to which ruling of the court the defendant, by its counsel, duly excepted; which said exception was then and there noted upon the minutes of the court.

And thereupon the following proceedings were had:

Mr. BROWN: After the admission that the gas company is able to respond to the amount that is claimed, is it necessary to go on with this testimony?

The COURT: I do not think the admission of a fact that it is able to respond to damages amounts to anything. The object of this evidence is, as Mr. Darlington says, to furnish the jury the basis upon which they may calculate exemplary damages if they are entitled to exemplary damages, as is claimed. If the jury are going to give exemplary damages, they might give much larger damages against a very wealthy person than they would against a person of ordinary circumstances.

Mr. WEBB: Their claim here is only for $50,000.

The COURT: If you admit that if they are entitled to a verdict at all they are entitled to $50,000, that does away with the necessity of the evidence; otherwise I think it would be admissible.

To which ruling of the court counsel for the defendants duly excepted; which exception was then and there noted upon the minutes of the court.

And thereupon said witness further testified that he knows what dividends have been paid by the gas company since 1890, but does not know what has been earned; that every year they have paid ten per cent., which amounts to $200,000 a year; that in 1893 they paid $300,000, which was 15 per cent.; that that was an extra
36 dividend; that in 1894 he knows of no extra dividend; that in 1895 they paid $400,000—an extra dividend; that in 1890 it was not a cash dividend that was paid; that $600,000 was issued in certificates of indebtedness—$6 on each share of $20; that from 1890 down to the present time they have paid the regular ten per cent. dividend every year; that in 1890 they issued $600,000 of interest-bearing certificates to the stockholders, which would make it 40 per cent. for that year; that in 1893 there was a special dividend paid of $3 a share in addition to the 10 per cent.; that in 1894 he does not know of anything being paid but the regular dividend; that in 1895 they paid $4 a share; that it takes $200,000 to make

the regular dividend, and they paid $400,000 extra—$600,000 altogether.

And thereupon said witness further testified on recross examination that he knew Mr. Thomas Holden; that Holden was a draftsman for him; that he does not recollect whether or not Holden was present in the office of the gas company at any time after he resigned when he, witness, was there; that he never told Holden that he intended to make it hot for the company up on the hill; that he never made any threats to any of the clerks about the office.

And thereupon counsel for the plaintiff announced his testimony closed.

And thereupon the counsel for the defendants moved the court to instruct the jury, upon all the evidence, to return a verdict for the defendants; but the court overruled said motion; to which ruling of the court the defendant, by its counsel, duly excepted; which said exception was then and there noted upon the minutes of the court.

And thereupon the defendants, in order to maintain the issues on their part joined, produced as a witness one JOHN R. MCLEAN, who, having been first duly sworn, testified that he was the president of the Washington Gas Light Company and was such president in 1893; that while he was president Mr. Lansden, the plaintiff in this case, was superintendent of the gas company; that he never saw the letter which has been introduced in evidence from Mr. Brown, the editor of the newspaper called The Progressive Age; that he never saw an answer written to it; that he does not remember when he first saw the letter of Mr. Brown and the answer of Mr. Leetch that have been put in evidence, and cannot tell whether it was before the suit or afterwards; that he remembers in 1893 of an investigation that was pending before Congress in regard to the price of gas in the sundry civil bill; that he had a conversation with Mr. Lansden about it; that, knowing very little about the gas business, he asked Lansden to prepare a statement to give him an idea as to what he should testify to—as to what his side of the question would be; that he had more than one talk with Mr. Lansden about it; that he looked to him to give him (witness) information in regard to it; that he looked to him as a gas expert
37 and would have to rely upon his experience to make their statement and wanted to know what he would say; that this estimate was written on paper, in the form of questions and answers, and contained the cost of making gas; that he does not know what Lansden told him; that he is not positive as to the general conversation: that he was trying to make a defense for the gas company and wanted him to furnish him the information that was necessary, and witness asked him to put this information on paper, that he might have it; that he did not furnish him with these figures and prices; that he did not know the figures; that he does not believe he got this information from Mr. Lansden; that he had no information; that, in fact, he was ignorant of the gas busi-

ness and looked to Mr. Lansden for the information; that he had been president of the gas company at that time four or five months, perhaps; that he thinks he gave the paper that Mr. Lansden gave him to one of the officers of the company; that he does not know to whom he gave it, but whoever it was he asked him to keep it, and said that it would be valuable; that it was an opinion which Mr. Lansden had given him; that witness kept no papers; that when Mr. Lansden gave him that paper he said he would testify to that; that Lansden was giving him that as their defence and what he (Lansden) would testify to; that that was witness' understanding; that there was no condition to it; that this information came from Mr. Lansden as far as witness knows, and witness looked to him for it, and this paper was the result of his request.

And thereupon counsel for the plaintiff conceded that there was no malice against Mr. Lansden at the time he left the gas company's service, in June, 1893.

And thereupon said witness further testified that he had no personal malice or ill-feeling towards Mr. Lansden in 1894.

And thereupon said witness, on cross-examination, testified that at the time these answers were given by Mr. Lansden Mr. Leetch had no positive position with the company; that he had no assignment; that he had just come to the gas company; that Mr. Leetch first had a recognized position with the company after Mr. Lansden had left the service of the company; that he thinks Leetch was on the pay-roll of the company at that time; that he was just generally employed there and familiarizing himself with the company; that Leetch had no positive employment until after Mr. Lansden left; that witness does not think that he was put in exactly the position of Mr. Lansden; that in fact he was appointed generally to take care of the works and to do the best he could for the company; that he was a gas engineer and took care of the works; that witness has never seen the article in the Progressive Age in regard to Mr. Lansden; that he does not know when he first heard of it; that it was after its publication, of course; that he thinks the paper is sent regularly to their office, but that witness does not read it; that he does not know how long after the publication of the article it was that he first heard of it, but that it was some time afterwards; that he did not lose interest in Mr. Lansden or anything relating to him; that he
38 never took any steps in regard to these answers; that they did not concern him. On being asked, "Did you not think it a little remarkable that a private interview that you had had should appear in a New York paper?" witness answered, "It was not given out." That witness, as an officer of the company, gave it—*i. e.*, the paper in Lansden's handwriting—to one of their officers there; that they contemplated its publicity, it becoming public property; that it was a paper prepared for a committee of the House; that they did not contemplate its publication in a New York paper; that he was not surprised to find it published in the New York paper; that it is not a matter of surprise to him—did

not interest him—and that he did not give it a moment's thought; that he denies that he thought anything about the answer which has been made the basis of an attack upon Mr. Lansden in a New York paper being given to a New York paper; that he has never read that article and does not know the contents of it today; that in February, 1893, he did not know what Mr. Lansden's duties were; that they looked upon him as a gas expert, and looked to him for the manufacture of the gas and for general counsel in every way; that any information witness wanted about gas—about its manufacture or its distribution or anything of that kind—he would naturally ask Mr. Lansden for it; that he does not know what items enter into what you call putting gas into the holder; that he has never taken any part in the mechanical part of it or in the manufacture, and knows nothing about it; that he knows the cost after it has been manufactured and has left the holder, but beyond that he does not know anything about it; that Mr. Lansden was the man they generally looked to for everything; that if there was a stoppage in the pipes or an explosion in the streets they would naturally look to Mr. Lansden; that he was their expert man in anything of that kind; that he supposes the salaries of the clerical force in the office come under the distributing department; that Mr. Lansden did not employ the clerks nor did he pay their salaries or have any means of knowing what their salaries were; that witness expected Lansden to give him the cost of distributing gas because he thought that a gas expert would know the general run of the business; that he did not have any one to inquire of about that, and it was the most natural thing that he should have gone to the man who manufactured it and who was an all-around expert to see what it would cost him to make it and what it cost the company to deliver it to the consumer; that he did not expect Mr. Lansden to know about the clerical force, but when he asked him to furnish the cost of making and distributing gas he expected to be informed about what they could afford to make gas for, including all these items; that in getting this information as to the cost of making and distributing gas Mr. Lansden was not confined to his experience at their works; that witness said, "Mr. Lansden, you see what they want to do. They want to reduce the price of gas. We want to bring the best defence we can. Now, what price can we afford to go below, or at what line would the gas company lose money? How close can we go and make a profit?" I asked him to make
39 me some kind of a report, and to please reduce it to writing, so that it would always be available, and we would know just where we stood if we want to make a defence of the company when they say they are going to make a material reduction; that he does not know whether he asked for a general idea of what the cost of gas was or asked him to give the exact cost of it; that he supposed that he read the paper that Mr. Lansden brought him, or heard it read; that he wanted the cost of gas at their own works, and got from Mr. Lansden this answer, in which he gives 48.38 cents in the holder and 49.09 cents for distribution, for he expected to put him on the stand.

And thereupon the said witness, in response to interrogatories, testified as follows:

Q. And you thought he was giving you that information down to the one-hundredth part of a cent?

A. I didn't care a rap about that. I expected him to be on our side in the fight they were making against us.

Q. Could the cost of either manufacture or distribution of gas down to a fraction of a cent be ascertained in any other way than from the books of your company?

A. I don't know; it might be. I took it that Mr. Lansden was an expert and, as I say, an all-around gasman, and that he would know about what we could do.

Q. You have already told us that items entered into the cost of gas with which he had nothing to do. My present question is whether it was practicable, in your opinion, to ascertain down to within a hundredth part of a cent what the cost of manufacturing gas or the cost of distributing it was.

And thereupon the said witness further testified that he does not suppose the entire cost of the gas to the company could be gotten except from the books, which are in the possession of the bookkeeper; that Mr. Lansden is mistaken when he testified that witness asked him about the cost of gas and Lansden told him that he could not give him that; that witness could get that in his (witness's) office, and that witness then went out and came back with this data, and he did not do anything of the kind; that he looked entirely and absolutely to Mr. Lansden for this information; that he cannot remember to whom he gave the estimates prepared by Mr. Lansden.

And thereupon the said witness, in response to the following interrogatory:

"Q. You have officers whose business it is to have custody of papers of this kind?"

testified as follows:

"A. I suppose so. I suppose I gave it to Mr. Orme or to Mr. Bailey or any gentleman that I happened to meet. I probably said, 'This is a valuable thing; it is the opinion of Mr. Lansden, an expert opinion, and is a thing that ought to be put away; it is a good thing for reference.'"

40 And thereupon the said witness, in response to interrogatories, further testified that he knows nothing of the contents of the paper, and doubts if he ever read it himself; that he did expect him to be the expert of the company and depended upon him; that he did not ask Lansden what he would swear to; that he asked him to reduce to writing a defence of the company, that they might have it, and that they could always rely upon, and this he did; that it was understood that Lansden would naturally represent the company before any committee meeting; that he expected Lansden to

testify substantially to what was in that paper before the committee; that he has no recollection of having given Lansden such figures, and does not believe that he did; that he did not understand that all Lansden was to do was to testify that these figures were from the books of the company; that he understood that to be simply a statement by Mr. Lansden as an expert; that if he depended only on the books and had relied on them he would have gone to them himself, and could have had that knowledge without Mr. Lansden; that witness asked for his knowledge as an expert; that Mr. Lansden wrote all of the questions, and if there was anything queer in the questions or anything out of the way in the answers it was Mr. Lansden's own fault; that witness knew nothing about it; that his impression was that the figures represented Mr. Lansden's expert knowledge in a general way and not the actual cost.

An thereupon the defendants, to further maintain the issues on their part joined, produced as a witness one CHARLES B. BAILEY, who testified that in 1893 he was the secretary of the Washington Gas Light Company and had held that position for about 26 years; that he resigned the first of December, 1895; that he first saw the letter from Mr. Brown dated February 12th, 1894, soon after it was received; he cannot tell exactly the date; that he thinks he first saw it in Mr. Leetch's possession, and that it was brought to his notice through Mr. Leetch; that he never saw the letter written by Mr. Leetch to Mr. Brown before it was sent and never had any knowledge of its contents; that he first saw it after Mr. Brown wrote to the company saying that he had received a letter from Mr. Lansden in which he questioned the statements contained in the letter; that witness then went to the letter book and looked at it to see what the letter said; that that was the first time he ever saw it; that that was the first time he ever had any knowledge of the existence of that letter; that he never knew anything about the article in the Progressive Age until that article had been published—not until they received a copy of the paper in which the article was published; that he then read it as a mere matter of incident; that he usually looked the paper over; that that was his first knowledge of the article; that it was the general practice of the office that correspondence in matters of this sort shall first go to the secretary; that he first knew of the paper which is in the handwriting of the plaintiff in the early part of 1893; that he knew Lansden was preparing such a paper, and he called on
41 witness for some figures in relation to the distribution of gas; that witness does not remember what he furnished him, but he furnished him what he asked for; that what he furnished related to the accounts that were kept in the office, especially those accounts relating to the control and distribution of gas—that is, to accounts not relating to the manufacture of and the putting of gas into the holder; that witness furnished him with the footings of those accounts; that he never made any calculations at all, but furnished him with the footings of the account that he asked for;

that witness does not know what Lansden did; that he knew his purpose and had talked the matter over with him; that they were both interested in the same thing—the preparation of this paper—and witness rendered him all the assistance he could and gave him all the information he desired; that he did not give him any percentages as to the cost of gas; that Lansden took these figures that witness had and derived his own results from them; that these footings included the salaries of the officers and all the office expenses, the expenses of the complaint department, and everything relating to the distribution of gas, in which they included everything outside of the manufacture—after the gas is put into the holder; everything outside that we call distribution—that is, getting it to the consumer and getting back money for it; that all accounts that enter into the manufacture of gas are first sent to the works and after that come to the office; that all purchases are made by the engineer at the works of the material entering into the manufacture of gas; that the accounts are sent there and entered on the books, approved there, and sent to the general office for payment, and then they come out in the general books of the company at the Tenth Street office; that the engineer at the works has a record and can tell at any time the cost of putting gas into the holder; that Mr. Lansden applied to witness for this information in respect to the account covering the distribution of gas, which accounts were kept in the main office, and received this information from the witness and made his own calculation.

And thereupon the said witness on cross-examination further testified that the accounts kept at the works are for the purpose of giving the superintendent knowledge of what the gas costs in the holder; that these accounts do not show any money, in a general way; that they are statements that come down showing so many tons of coal and so many gallons of oil, so many bushels of lime, and against these the price is carried out in cents and fractions of a cent; that these monthly accounts show the price of oil; that the oil is contracted for at the main office, but that the clerk at the gas works would know what was paid for it, because he would be informed by the engineer, whose duty it is to know all of these things; that everything that enters into the cost of making gas it is his interest to know and to keep the cost down; that if he can use a half gallon or a fraction of a gallon less of oil in making a thousand feet of gas, it is to his advantage to do so; that their office contains everything, and if any one wants to know the actual
42 cost of the manufactured product they have got to go to their books to learn it; that Mr. Lansden came to witness, and he knows that these figures came from his office; that witness gave Lansden the account that he did not have; that he had partly made up his calculations before he came to witness; that he made up the accounts, so far as the manufacture of gas is concerned, before he came to him and asked him for the accounts he did not have; that the accounts are all classified at the works and entered up on the books there when the bills are received and paid, but witness' office is the only place where the books show the transac-

tions classified for the year; that it would not be an endless job to go over these daily and weekly items and classify them; that he was shown the Brown letter soon after it was received by Mr. Leetch, he thinks, but did not do anything in regard to it; that he was not asked to do anything; that he saw it was a letter calling for a reply, but that he did not answer it; that he did not think it was handed to him as a matter that belonged to him, but it was given him to read, and that he read it; that after Mr. Leetch handed it to him he returned it to Mr. Leetch, for no particular purpose; that the letter was addressed to the Washington Gas Light Company, but the envelope was addressed to Mr. Leetch; that the whole thing was shown to him—letter and envelope; that he did not answer it because it came to Mr. Leetch, and he evidently had not gotten through with it when he handed it to the witness; that the answers prepared by Mr. Lansden had been in his custody, and that the contents of those answers got into the Progressive Age through the letter of Mr. Leetch; that Mr. Leetch got these answers from witness; that he asked to look the paper over; that he never had seen it; that witness told him he had it; that this was at one time when witness and Leetch were talking over the suit that was brought by Lansden; that this was not long after the trouble growing out of this correspondence; that no suit or trouble had arisen when witness first saw this letter of Brown'-; that when the question came up witness said to Leetch, "I have a paper in Mr. Lansden's own handwriting where he stated that the price of gas was so and so and the price of distribution was so and so;" that he stated this to Leetch on *on* the subject of this letter of Brown's, and then he gave him this paper; that he did not know what he wanted with the paper; that he thought nothing about it; that Leetch said, "Where is the paper?" that witness got it, and Leetch said, "Let me take it." He took it and went off to his room; that witness never saw it again or heard of it until after this letter was written; that witness did not give Leetch any data to reply to the letter; there was nothing thought about writing the letter at all; that he simply said that as a matter of fact, because he (Lansden) had said that gas could be made and sold at a profit at a dollar; that the correspondence belonged to the secretary's office; that in February, 1894, Mr. Leetch was general manager of the company; that he took the place of what used to be the engineer; that they have now two engineers, one at each end, who are subor-
43 dinate to Mr. Leetch; that every letter is not written from the secretary's office; that all letters relating to the engineer's department pretty much are written by the engineer or superintendent; that this matter as to the cost of gas was regarded as a matter belonging to the engineer's department; that witness does not think Mr. Leetch would have been the proper officer of the company to give the information which Mr. Brown wanted; that the letter would properly, if it was addressed to the company, have been answered from the secretary's office; that it was not answered from his office because Mr. Leetch answered it himself; that that was a letter referring to the truth or falsity as to the cost of the pro-

duction of gas; that most of the letters relating to the cost of the production of gas would properly come to the secretary's office; that witness saw the article in the Progressive Age shortly after it was published; that witness does not know that his company did anything after his attention was called to the article; that witness saw that Mr. Leetch's letter had been used as a basis of a charge that Mr. Lansden had testified falsely, but he took no measure to correct the article in any way; that he did not carry on any of that correspondence; that Mr. Brown came to the office himself personally soon after the article was published, but what explanations were made to him witness does not know.

And thereupon counsel for the plaintiff admitted that the witness Bailey had had no disturbance or controversy with Mr. Lansden and bore no personal malice to him, but added, "Of course, the legal malice implied in this article is a question I cannot dispose of in this way."

And thereupon the witness CHARLES B. BAILEY, having been recalled, testified, on direct examination, that these monthly reports do not show the money that is expended; that they do not show any prices or statements of cost; that they simply show the amount of each kind of material used during the month; that the prices are shown in the yearly report; that the clerk of the works makes a daily report to the daily manager, which shows that these reports have not come directly to the witness for the last two or three years.

And thereupon, on cross-examination, the said witness further testified that the yearly report includes the articles that enter into the manufacture of gas and includes oil; that the clerk gets the price of oil from their office; that the bills for oil go to the works and are there entered; that they go there to be verified and are entered with the prices on them; that they are given to the general manager now, but during the time that Mr. Lansden was there they were sent up from their office; that these monthly reports simply give the quantities of materials used—so many bushels of lime, so many of coal, so many gallons of oil, and so on; that these reports were made up by the clerk of the works, who was clerk to Mr. Lansden, and appointed by the president; that this clerk is the book-keeper; that the report does not show anything that enters into the distribution of gas; that it does not
44 show the taxes; that the amount of taxes paid by the company amount to something over $40,000; that the taxes for the year 1892–'3 were something over $40,000; that the amount of taxes did not appear in the books of Mr. Lansden's office; that it was no part of Mr. Lansden's duty to be advised as to the cost of the distribution of gas, and that if Mr. McLean said that it was he was mistaken about that; that the cost of insurance does not enter into the cost of production or manufacture; that it enters into the cost of distribution; that this would not appear upon the books which were at the works and to which Mr. Lansden had access; that this averaged several thousand dollars a year; that the annual cost at that time in street lamps must have been about twenty-odd

thousand dollars; that this did not appear in the books of Mr. Lansden's office, nor did the expense of extending the gas mains and gas pipes throughout the city; that this latter is quite a large item and varies very much in proportion to the number of miles that are laid every year; that it would not be less than $20,000, probably, in any year of late years; that $30,000, witness states, would be a small amount; that when he handed Mr. Leetch these answers written by Mr. Lansden at the time he had this Brown letter in charge he knew that the items in those answers, at least in so far as they regarded the cost of distribution, did not rest upon Mr. Lansden's personal knowledge; that they came from their books; that witness gave many of these items to Mr. Lansden; that he did not give him the items that entered into the manufacture of gas; that it was purely a matter of book-keeping to ascertain from the books what the cost of the manufacture was; that witness does not recollect showing to Leetch these answers on the day he was shown the Brown letter, but the dates seem to indicate that it was at that time; that he showed them to him in the first place, and then Leetch said, "I never have seen that; let me look at it;" that he handed it to him, and Leetch took it and went to his room; that he could not say how long he kept it; that witness does not remember when he got it again; that he does not remember when the answers were returned to him; that they have never been out of the city of Washington, to witness' knowledge; that they never were in New York; that they were never sent to Mr. Brown; that it is the recollection of witness that a copy of them was sent to Mr. Brown; that he does not even remember that they did that and does not think they did; that he does not think either the original or a copy was ever sent to Mr. Brown; that the Brown letter came to Mr. Leetch; that it was shown to or read to the witness, but not handed to him, and he did not know it had been answered until he saw it in the Progressive Age; that he did not answer it as secretary because it was out of his possession; that if the treasurer of the company should take a letter belonging to his department and keep it, witness would presume that he kept it for some purpose, and would probably wait until he handed it back again; that he would recognize his right to do that, and he would recognize the right of the general manager to take papers that he wanted to see which
45 would come to him as secretary; that he has the right to take such papers, but he does not answer letters that are outside his particular line, as a general thing; that his right to answer any letters addressed to the company has never been officially denied; that if he wants to answer it, witness presumes he would; that witness did not mean to convey the impression that Mr. Lansden could have made up an exact estimate or calculation as to the cost of production from the yearly report; that he does not make up the cost from that report, but he makes up the cost from the books that are kept up at his, Lansden's, office; that he never saw the books at Lansden's office, but witness presumes that *that* they would show the actual cost of production.

Said witness was further interrogated and answered as follows:

Q. And has he also the right to answer letters?
A. That would be a question.
Q. Has it ever been questioned by your company?
A. No; not officially.
Q. He has always exercised the right to answer such letters as he saw fit?
A. He does not answer letters that are outside his particular line, as a general thing.
Q. Has his right to answer any letter to your company ever been denied to him?
A. No.
Q. If he wants to answer it he does it?
A. I presume he would.
Q. That was acquiesced in by your company?
A. It never has been denied.

And thereupon the said witness, on re-examination by counsel for the defendant-, further testified that when Mr. Lansden came to him he gave him all the accounts that he asked for, and that undoubtedly taxes was one of the items; that then Mr. Lansden applied to him for figures going to make up the cost of distribution of gas, and that witness gave them to him; that Mr. Lansden, during his occupancy of the office of superintendent, had the privilege of looking at these items if he wanted to.

And thereupon said witness further testified that Mr. Lansden, in the latter part of his term, had an office on the second floor, over the secretary's office, in the building in which the witness had his office.

Thereupon said witness further testified as follows:

"Q. You say you recollect the incident of being shown the letter from Mr. Brown and about handing Mr. Leetch these questions and answers in Mr. Lansden's handwriting. How do you recollect that incident? How did it happen?

"A. My recollection is that we were talking in regard to the receipt of this letter and its contents, and in the conversation I said that I had Mr. Lansden's figures showing the price to be so much, and then Mr. Leetch expressed a desire to see it. I got it out, and he looked at it and said, I have never seen this; let me take it and read it."

46 And thereupon the defendant-, further to maintain the issues upon their part joined, produced as a witness one WILLIAM B. ORME, who, having been first duly sworn, testified that he is the secretary of the Washington Gas Light Company and has held that position since the 9th of December, 1895; that prior to that time he was assistant secretary, since March, 1885; that he has been with the company since June, 1867; that he has seen the letter of February 12th, 1894, within the last few days, and that he has seen the copy of the original letter from Mr. Leetch, dated February 13, 1894, in their letter book; that he thinks he first saw it

since this suit was instituted; that he could not say whether he saw it at the time it was written; that he cannot say that he saw it at the time it was written; that he does not believe that he saw the letter until after the article had appeared in the Progressive Age, whatever date that might be; that that was the first he knew of this affair; that he had no personal knowledge of the sending of that letter at the time that it occurred and really knew nothing about this case until he saw the article in the Progressive Age; that he saw the statement made by Mr. Lansden subsequent to his reading the article, but what the date was he cannot say; that he knew nothing at all about this alleged libel or anything connected with it until the publication of the article in the Progressive Age; that he is the custodian of the books containing the proceedings of the meetings of the board of directors of the Washington Gas Light Company and has the books containing those proceedings in court; that he has examined this book carefully for each meeting to see whether there is any record of a meeting of the board of directors of that company since the 1st of March, 1894, having any reference whatever to the article which appeared in the Progressive Age or the letter written by Mr. Leetch, and that he failed to find any mention of it whatever.

And thereupon counsel for the defendant offered in evidence a letter from the president of the company describing in detail the duties of the engineer; second, a resolution of the board of directors, passed in 1886, for the appointment of the general superintendent, and, thirdly, a certified copy of the appointment of Mr. Lansden.

Said papers were given in evidence, without objection, and are in the words and figures following, to wit:

WASHINGTON, *March 1st*, 1865.

Mr. Geo. A. McIllhenny.

DEAR SIR: You are hereby appointed superintendent of the "Washington" gas works at a salary of $2,000, two thousand dollars, a year, payable monthly. You will take charge of every portion of said works appertaining to the manufacture, distribution, and consumption of gas and all persons employed in those departments.

All contracts for purchasing coal and selling tar will be made by myself, but you are authorized to contract for other supplies to the works, said contracts to be submitted to me for approval.

47 You will also fix the price of coke, but all coke must be purchased and paid for at the office where the purchaser received an order, which order you will fill and preserve.

You will have stated hours for being at the office in town and give attention to all complaints of leaky mains, etc.

I commend to your special attention the following points:

1st. A fixed standard for gas.

2nd. Increasing the product of gas per lb. of coal.

3rd. Increasing the coke sold.

4th. Saving of refuse coke.

5th. Reduction of men employed at works per 1,000 ft. of gas produced, and all other points which need correction.

The welfare of the company demands economy in its management, and that the gas produced shall be uniformly good.

Respt. yours,

B. H. BARTOL,
Pres't Gas Light Co., Washington, D. C.

A true copy.
Attest: WM. B. ORME, *Sec'y.*

Extract from Minutes of Board of Directors of Washington Gas Light Co.

OFFICE OF THE WASHINGTON GAS LIGHT COMPANY,
WASHINGTON, D. C., *September* 17, 1886.

The board of directors of this company met today at 10 o'clock at the office of the company, Messrs. McIllhenny, Bartol, Riley, and Orme being present.

The minutes of the meeting of July 17 were read and approved.

The president called the attention of the board to the necessity of employing a competent man to fill the position of superintendent of the company (said position being formerly designated engineer), and on motion of Mr. Riley, Mr. McIllhenny was formally authorized to employ such person for the position.

A true copy.
Attest: WM. B. ORME, *Sec'y.*

SEPT. 25, 1886.

Thos. G. Lansden, Esq.

DEAR SIR: Our board of directors has authorized me to employ a superintendent, and I have concluded to offer you the position at a salary of $5,000 per annum, payable monthly, the condition being that you will give satisfaction, presuming that you are a first-class gas-works superintendent; otherwise this agreement may be revoked at any time.

You may assume the duties by November 1st or, if more convenient to you, you may name a later date.

Yours very truly,

GEO. A. McILLHENNY, *President.*

A true copy.
Attest: WM. B. ORME, *Sec'y.*

48 And thereupon the said witness, on cross-examination, further testified that the directors of the company in 1894 were John R. McLean, William B. Webb, John G. Bullitt, George T. Dunlop, and James W. Orme; that the secretary of the board was Charles B. Bailey; that his books showed no action by the company either before or after the publication of this article; that he cannot say when he saw this article in the Progressive Age—that is, how shortly after its publication; that the paper comes in stated intervals from the post-office, and when he has time he generally glances over it; that he thinks that he has no doubt he saw

this article very shortly after it appeared; that it did not make any impression on him, except that it rather amused him when he saw the article; that he thought it was funny; that possibly he had some talk with some of the officers about it; that he cannot remember talking with Mr. Bailey about it, but has no doubt that he did; that he cannot say that he ever talked with Mr. McLean about it; that he has seen originals or copies of correspondence between his company or its officers and Mr. Brown on this subject, but personally he has not that correspondence, but it is in his possession as secretary, and that his counsel had said correspondence in court.

And thereupon, said correspondence being called for by counsel for plaintiff, counsel for the defendant- said: "Mr. Leetch has those letters and considers them his personal property, and we have sent for them."

And thereupon the defendant-, further to maintain the issues upon their part joined, produced as a witness one GEORGE T. DUNLOP, who, having been first duly sworn, testified that he was director of the Washington Gas Light Company and attended the meetings of the board of directors of that company; that he has been such director since 1893, but is not absolutely certain as to the date; that in February or March, 1894, the board of directors of that company did not take any action in regard to sending any information to the Progressive Age, a paper published in New York in the interest of gas; that witness never heard of it; that no such letter was ever before the board when he was present; that witness never saw the article in the Progressive Age until it was handed to him upon the witness stand; that he never saw a copy of the Progressive Age; that he never had anything personally to do with the publication of that article before or after its publication, and never heard of it until he heard of it in court.

And thereupon, on cross-examination, the said witness testified that some time in the year 1895, he thinks, Mr. McLean told him about this suit and said that the former superintendent had brought suit against the company; that the board of directors never took any notice of that suit; that it was never up before the board and witness never heard of it except in that one instance; that neither the president nor the secretary informed the rest of the board of directors that a paper in their office had been copied by the general manager, as general manager, and sent to New York for publication.

49 And thereupon counsel for the plaintiff called upon counsel for the defendant- to produce all the correspondence between the gas company and any of its officers with either Mr. Brown or the Progressive Age in relation to this matter of Mr. Lansden prior or subsequent to the publication referred to.

And thereupon counsel for the defendant- interposed and objected to producing all papers of that description and to a general notice of that kind to produce all the correspondence on the ground of lack of definiteness in the demand. Said letters referred to were

submitted to counsel for the plaintiff, who thereupon offered the following in evidence; but counsel for the defendant objected to said letters being offered in evidence, and reserved an exception, on the ground above stated; which exception was then and there duly noted upon the minutes of the court.

Said letters are in the words and figures following, to wit:

"E. C. Brown, publisher. Established 1883.

Office of Progressive Age. Gas, electricity, water.

NEW YORK, *February* 14, 1894.

John Leetch, Esq., gen'l manager Washington Gas Light Company, Washington, D. C.

MY DEAR SIR: I thank you for your prompt reply to my letter of the 12th inst. Your statements, as contained therein, are exceedingly interesting, I can assure you. It would seem that the inference as to the occasion for the statement could only result from one cause.

I would ask you, if you can do so without too much trouble to yourself, to give me categorically the questions propounded to Mr. Lansden and answered by him as reported in 'The Star' of the 3rd inst. I should like to reproduce exactly the questions and his replies under the former resolution of Congress, February, 1893, and follow up with the same covering the present investigation.

I will not ask you to hurry about this, for I cannot use the matter until our issue of the 1st of March, but then, I can assure you, I will take it up in the proper way. Any other facts of interest that you can give me in this connection I shall appreciate.

Mr. Lansden is a gentleman whom I have met on only one or two occasions, and I scarcely know the man, but I should have thought that he or any one possessing ordinary judgment would not have placed himself in the awkward situation that he seems to have done, judging from the two records he has made during investigations. I know that the gas industry as a whole will not feel very kindly towards Mr. Lansden from the fact that his statements made at the recent investigation as to the cost of manufacturing and distributing gas are being republished in scores of papers throughout the country, and many gas companies far removed from Washington will have to battle against the rec-nt statements of Mr. Lansden.

Very truly yours, E. C. BROWN.

50 Will the testimony be printed? If so, I should like to secure a copy of the same."

"E. C. Brown, publisher. Established 1883.

Office of Progressive Age. Gas, electricity, water.

NEW YORK, *February* 19, 1894.

Mr. John Leetch, gen'l manager Washington Gas Light Co., Washington, D. C.

DEAR SIR: I trust our letter of the 14th inst. in reply to yours of the 13th was duly received. I hope you are intending to give me questions propounded to and answered by Mr. Lansden during the present investigation similar to the manner in which you gave me the questions then answered by him under the former resolution, as appears in your letter of the 13th. I am wanting to treat this matter in the way it should be touched on, and I have in mind publishing Mr. Lansden's testimony on this particular point side by side.

Among all the gasmen whom I have talked with about his peculiar position, not one says a good word for him, as might naturally be expected.

Please let me hear from you as early as convenient, and oblige,

Yours truly, E. C. BROWN."

"WASHINGTON, *Feb.* 20, 1894.

E. C. Brown, Esq., publisher Progressive Age, 280 Broadway, N. Y.

DEAR SIR: I am in receipt of yours of the 14th and 19th instant. This delay in reply was my inability to secure a copy of report of proceedings before investigating committee of Congress. Only about twenty copies have thus far been printed for use of committee.

Today I received a copy, which I herewith enclose for your use.

Respectfully,

(S'g'd) JOHN LEETCH,

Gen'l Manager."

And thereupon the defendants, further to maintain the issues upon their part joined, produced as a witness one JOHN LEETCH, who, having been first duly sworn, testified that he is at present the general manager of the Washington Gas Light Company and has had about eleven years' experience in the manufacture of gas; that he was president and general manager of the Georgetown Gas Light Company for nearly eight years and resigned that position about March 1, 1893, to take his present position with the Washington Company; that he does not remember when he first saw the memorandum of questions and answers made by Mr. Lansden, but he thinks he saw that paper prior to the receipt of the letter of February 12th; that he thinks it was immediately after the investigation before Congress, and his recollection is that he was in the office and talking about the testimony that had been given there, and the secretary said that the statement made by Mr. Lans-
51 den a year previous conflicted very much with the statement just made before the investigation committee, and said that

he had it in his drawer and brought it out, and that witness asked to see it; that the envelope in which that letter came was addressed "John Leetch, manager Washington Gas Light Company;" that the answer to that letter was written by the witness unaided, without the assistance of anybody; that it was a personal letter, and that he answered it as such; that he has no recollection of showing it to anybody; that it was a matter of indifference to him and the company had nothing to do with it; that he wrote the letter as a personal letter, as a courtesy to the party who wrote for an answer; that he did not write that letter in the performance of his duties as general manager; that he wrote it as a mere act of courtesy to this gentleman who had written to him; that he had no personal knowledge of the gentleman; that he simply wrote the letter to him and witness replied as a mere act of courtesy, outside of his duty as manager of the company in any way; that he received the letters which have been heretofore offered in evidence by Mr. Darlington.

And thereupon counsel for the defendant offered in evidence the envelopes of letters of February 14 and 19th and March 1st, which are as follows:

"The Progressive Age. Gas, electricity, water.

$3.00 per year. 280 Broadway, New York. Semi-monthly.

New York, N. Y.,
Feb. 14, 5.30 p. m.,
1894.

JOHN LEETCH, *Gen'l Manager,*
Washington Gas Light Co.,
Washington, D. C.

Personal."

"The Progressive Age. Gas, electricity, water.

$3.00 per year. 280 Broadway, New York. Semi-monthly.

New York, N. Y.,
Feb. 19, 5.30 p. m.,
1894.

Mr. JOHN LEETCH, *Gen'l Manager,*
Washington Gas Light Co.,
Washington, D. C."

"The Progressive Age. Gas, electricity, water.

$3.00 per year. 280 Broadway, New York. Semi-monthly.

New York, N. Y.,
Mar. 1, 5.30 p. m.,
1894.

JOHN LEETCH, *Gen'l Manager,*
Washington Gas Light Co.,
Washington, D. C."

And thereupon said witness further testified, on direct examination, that he received letters from Mr. E. C. Brown subsequently to March 1st; that some were received in February; that he thinks he received one on March 23d, and that he replied to that letter.

52 And thereupon counsel for the defendant- offered in evidence said letter of March 23d, 1894, addressed to John Leetch, Esq.; which letter is in the words and figures following, to wit:

"Office of Progressive Age. Gas, electricity, water.

NEW YORK, *March 23rd*, 1894.

John Leetch, Esq., gen'l manager, Washington, D. C.

MY DEAR SIR: Of course you have read our article concerning Mr. Lansden's conduct (our issue 1st). Will you please inform me at your early convenience if our wording of questions and answers as furnished by you in our letters to me dated 2, 13, are correct? Can you, without too much trouble to yourself, supply me with a copy of the testimony taken under the 1893 resolution?

Lansden is mad at what we have published, and I think he means *fight*. The Age will not change its position in the matter unless it can be clearly established that it has done the man an injustice, and I fail to see, in view of the testimony, how he can show that. Please let me hear from you.

Yours, etc. E. C. BROWN."

And thereupon the said Leetch identified a press copy of an original letter dated March 24, 1894, addressed to E. C. Brown, Esq., and said copy was offered in evidence by counsel for the defendant and is in the words and figures following, to wit:

"WASHINGTON, *March* 24, 1894.

E. C. Brown, Esq., publisher Progressive Age.

DEAR SIR: Yours of the 23d instant is received. I have read the article in the Progressive Age on the question of cheap gas; also the statement as to Mr. Lansden's testimony in 1893 and his recent testimony before the investigating committee, a copy of which was sent you. The answers to questions in 1893 were written out by Mr. Lansden in anticipation of being called upon to go before the committee of Congress, before whom there was a bill to reduce the price of gas in the public parks and the Executive Mansion.

This bill was not prepared, neither was Mr. Lansden called before the committee.

The answers to questions as published by you are correct and are in his own handwriting in this office.

Very truly yours, JOHN LEETCH,
Gen'l Manager,
By WHITWELL."

And thereupon said witness further testified, on direct examination, that none of the letters which have been read in evidence were written by him in his capacity as general manager of the Washington Gas Light Company; that it was a mere personal matter altogether, exclusive of any duty that he owed to the gas
53 company; that the gas company had no interest in it, and he merely wrote it as an act of courtesy, stating the facts;

that he has no recollection whether any of the other officers of the company were acquainted with those letters and his answers to them; that nobody knew anything about it; that he does not know that he ever showed them to anybody; that in February, 1894, he had no malice towards Mr. Lansden and never had.

And thereupon said witness, on cross-examination, further testified that he thinks he saw a letter of March 1st purporting to have been written by E. C. Brown, but did — answer it; that there were several letters that he did not pay any attention to, but threw aside, as he had no interest in them; that he also supposes he received a letter of March 21st.

Said letter of March 1st is as follows:

"John Leetch, gen'l manager Washington Gas Light Company, Washington, D. C.

DEAR SIR: I am sending you by this day's mail ten (10) copies of our issue of this date. On page 79 you will find an editorial relating to Mr. Lansden's exploit. I have thought we have not been as severe in handling him as his conduct calls for. What do you think about it?

Very truly yours, E. C. BROWN."

And thereupon the said witness further testified, on cross-examination, that he did not answer that letter; that he has no recollection of it; that he got the copies of the paper therein referred to, and thinks they came to him; that he does not know that the article of March 1st was largely written upon the data which he had furnished; that it was not done upon his authority; that he did not know anything about the editor nor what he did; that it seems to be a copy of the letter that witness originally sent and Mr. Lansden's statement in his own handwriting; that that was a copy of Mr. Lansden's statement as to the price of gas, sent to Mr. Brown in answer to his letter of February 12th; that he does not know, as a matter of fact, that Mr. Lansden had not testified in 1893; that he found the statement at the office, and did not know anything about that when he wrote the letter; that what he sent him was a copy in Mr. Lansden's handwriting; that he made no answer to the inquiry as to whether or not he (witness) thought the article was too severe, because he had nothing to do with it, and took it for granted that Mr. Lansden's statement, as copied, was an honest, conscientious statement of the price of gas; that he believed it then and believes it now; that he did not know that he had not testified before a committee in 1893; that when he wrote the letter to Mr. Brown as to the matter being before a committee he did not say he (Lansden) appeared before a committee, but that he was called upon to make these answers; that in a later letter he wrote that Mr. Lansden was not called upon to go before the committee, but that this was not until after Mr. Brown had written to him that Lansden was going to make a fight; that he did not answer the
54 letter of March 1st at all; that he was not connected with the gas company when Mr. Lansden wrote out these answers

in 1893; that when Mr. Lansden went before the committee and made his statement in 1894, witness was also before the same committee; that Mr. Lansden's testimony was strange; witness thought he was making statements as to the prices of gas not borne out then by the fact, and his recollection now is that the next day, perhaps, in talking with the officers there—does not know who they were—Mr. Bailey, who was then secretary, said, "Mr. Lansden's testimony now differs very materially from his own written statement or his testimony"—I do not recollect the words—"a year ago;" "I have it in my drawer;" that Mr. Bailey produced it and the witness took it; that he asked to take it to look at it at his office; that his office was upstairs, he believes the same office occupied by Mr. Lansden prior to his taking charge; that that was the way he came into possession of it; that he knew nothing of it at the time more than the mere fact of its being in Mr. Lansden's own handwriting, an honest statement of facts, as he considered it then; that he wrote Mr. Brown the letter he did and copied the statement of Mr. Lansden; that he had been there for several months—probably two months—with Mr. Lansden, and saw his handwriting often; that the officers of the company recognized it, and, of course, he took it for granted that if they said so it was all right; that he has no recollection that he showed Mr. Bailey this Brown letter on the morning that it came in; that sometimes where the letters have any bearing upon their duties—some inquiry about some matter that may refer to the gas business in general—he would talk with them and show them the letter; that he and Bailey talked together in that way; that he regarded this letter of Mr. Brown's of February 12th as a personal letter to him—a personal inquiry of him; that he could not say that he ever saw Brown before February 12th, 1895; that some personal letters came to him addressed as gen'l manager of the Washington Gas Light Company for the reason that there is another gentleman John Leetch in Washington and to whom his letters would go astray; that this is simply a post-office designation, so that people will know that they are to write to John Leetch at the gas office; that many of his personal letters come addressed to the Washington Gas Light Company; that personal friends write him letters and address them to the Washington Gas Light Company; that he never noticed until less than a week ago that this letter was addressed to the Washington Gas Light Company; that after he was subpœnaed he got the letters out and then saw that the envelope was his, and that the inside he never noticed specially until within a week; that he just looked at the body of the letter; that he takes it for granted that if the address of E. C. Brown was not upon his own letter that he got it from the periodical they received at the office; that the whole tenor of the letter is to him; that he had just been before the committee and had met Brown, he thinks, once before; that he could not say that any part of the letter could be selected as personal; that
55 in letters that are written to him personally he is not generally designated as "Gentleman;" that he regarded it as a personal letter from the fact that the inquiry itself related to facts

that had just transpired; that he received the letter and considered it a personal one and answered it as an act of courtesy, without reference to his position with the Washington Gas Light Company.

And thereupon the following took place:

Q. Were they matters which concerned you personally?

A. Partially; not altogether; no, sir. I was speaking of the testimony that had just been given, to which the letter referred.

Q. We are talking about the letter.

A. I cannot take up the letter and say what was in the man's mind when he wrote it. I received it and considered it a personal letter bearing simply a personal inquiry. I answered the letter as an act of courtesy, without any reference on earth to my position with the Washington Gas Light Company.

Q. Do you think that long answer answers my question? What is there in this letter which you consider personal to yourself?

A. I don't know, sir; it was an inquiry of me.

Q. Here is the letter. Take it and read what is personal to yourself.

A. I cannot explain the letter in that way. It was directed to me, and I considered it a personal matter and an inquiry for certain facts.

That he had been before the committee himself, and his statement was the very reverse of Mr. Lansden's statement, and in that sense it became personal; that there is nothing in the letter which asked him whether his statements were the reverse of Lansden's, nor is there any reference at all to his testimony; that he thinks the latter part of that letter is personal; that it is asking him to give his opinion as to what the papers had published in Washington; that the letter was directed to him, and that he never opened a letter directed to the Washington Gas Light Company; that he looked at the body of the letter and did not notice the words "The Washington Gas Light Company" until within a week or so; that since he answered the letter it has been amongst the other papers in the secretary's office or in the office of the young man who had charge of these letters and papers; that this letter was picked out of his office; that it did not remain in his office after there was an indication that trouble would follow; that he thinks Mr. Brown came on and said that Mr. Lansden was making some trouble with him about the publication, and in view of that witness kept the letters to see what he had really written, and the letters were passed over and given into the care of Mr. Bailey; that the letter was given to the care and custody of the secretary of the gas-light company because it was a matter that had assumed a position when it was necessary to save the letters; that Mr. Lansden was charging that the statements made were false; that they were mere copies of the witness' own letters and his replies to Mr. Brown, and he wanted to save them; that nobody prompted him in the writing
56 of the letter of February 13th; that he could not have written this letter of February 13th without these papers that the Washington Gas Light Company gave him or without having seen

those papers; that he was aided to the extent that he was shown by the secretary Mr. Lansden's own statement; that he answered the letter personally and not as general manager; that he signed it as a kind of a post-office address because his letters were being mixed up with John Leetch's or some one else; that he did not know and had no reason to know, until it came out, that Mr. Brown was getting up this data to publish in his article; that the first he knew anything of it was when he saw it in this magazine; that he did not know anything about it before that time; that was the first publication; that it is his recollection that the first they saw of it was in this journal; that he knew, when he wrote the subsequent letter of February 20, 1894, that Brown was going to publish Mr. Lansden's statement; that he knew that, for Brown stated it in his letters; that he got this letter of February 14 from him in the course of the mail and in an envelope which is dated Washington, February 15th, and it is marked a personal letter; that he has no idea whether the direction "John Leetch, Esq., general manager," was put on the inside of that letter to keep the other John Leetch from getting it; that he does not know what was in Brown's mind; that he did not think he was addressed on the inside as general manager of the Washington Gas Light Company for the purpose of keeping the other John Leetch from getting it; that in the light of that letter he took it for granted that Brown was going to publish the letter he had sent him of February 14th; that he had every reason to believe that he was going to publish it; that he did not know just when the journal came out; that the article was published March 1st, and that this letter was dated February 14th, two weeks before that; that he knew he was going to publish it in the issue of March; that he had noticed a part of the letter, which reads, "I know the gas industry as a whole will not feel very kindly towards Mr. Lansden from the fact that his statement- made at the recent investigation as to the cost of manufacturing and distributing gas are being republished in scores of papers throughout the country, and many gas companies, far removed from Washington, will have to battle against the recent statement of Mr. Lansden;" that he does not know that he understood that this publication was intended to embitter the gas interests against Lansden; that he never furnished Mr. Brown with any data other than Mr. Lansden's own statement that was furnished in answer to the letter of February 12th; that he believes Mr. Lansden's statement- in the answers and questions to Mr. McLean were the honest convictions of Mr. Lansden at the time as to the price of gas, and had no reason to doubt it then and has none now; that he said in the letter of February 13th, "As Mr. Lansden is no longer in the employment of the gas company, the motive was generally understood which prompted his statement," because Lansden volunteered to make a statement 18½ cents different from what he had just written out; that he does not know anything about Mr. Lansden's motive, and the only reason he

57 said anything about his motive in 1893 was because he had heard several parties say that Mr. Lansden had said he was

going to get the company on the Hill, and witness took it for granted that he was there voluntarily for that purpose.

A copy of the report of said investigating committee was produced at the bar of the court, upon the face of which it appeared that said report was made to the House of Representatives on the 23rd day of March, 1894. Said report was not formally offered in evidence, but it was referred to by both parties in the cross-examination of witnesses and in argument before the jury without objection, and its date was specifically referred to in argument by counsel for plaintiff, also without objection.

Counsel for the defendants objected to this being incorporated in the bill of exceptions because said report had not been offered in evidence.

And thereupon, on redirect examination, said witness further testified that he appeared before the same committee in 1894 that Mr. Lansden did; that his testimony was also reported in the newspapers, practically; that they did not always report in full; that he supposed his name appeared in the newspapers as general manager of the Washington Gas Light Company and as having appeared before that committee.

And thereupon, on cross-examination, the said witness further testified that it is true that there was no investigation committee in 1893; that in the letter of February 13th, where witness said that under a former resolution of Congress, bearing date February 13, 1893, Mr. Lansden was called, he meant just what he said—that there was a resolution before Congress to reduce the price of gas to 75 cents; that it was probably in an appropriation bill, as is often done.

And thereupon the defendants, further to maintain the issues upon *its* part joined, produced as a witness one JAMES W. ORME, who testified that he was a director in the Washington Gas Light Company and had been for ten or twelve years; that he was a director in 1894; that he does not know and never heard of any discussion in the board of directors in February, March, or April of that year, or of any order being passed by the board of directors authorizing Mr. Leetch to answer a letter written by Mr. Brown, the editor of the Progressive Age, of New York city; that he attended all the meetings, he believed, monthly and never heard of any act of the board of directors which ratified the writing of a letter by Mr. Leetch to the editor of the Progressive Age, in New York city, of the date of February 12th.

And thereupon counsel for the plaintiff admitted that Mr. William B. Webb would testify substantially as Mr. Orme had done.

And thereupon counsel for the plaintiff stated that they would concede that persons are sometimes allowed to make statements before committees without being sworn, and that investigating committees sometimes interrogate persons without swearing them.

58 And thereupon the defendants, further to maintain the issues upon their part joined, produced as a witness one WILLIAM H. C. BAILEY, who, having been first duly sworn, testified that he is a clerk or book-keeper for the Washington Gas Light Company at the west station, corner 26th and G streets, and has been in their employ for 29 or 30 years at that station; that he was there all the time Mr. Lansden was superintendent of that station; that he never made any reports to the central office. When he first went with the company Mr. Bartol lived in Philadelphia; that he was president of the company and Mr. McIlhenny was superintendent. The witness then made monthly statements.

And thereupon said witness further testified that an accurate estimate of the cost of the manufacture of gas could have been made in the holder from those reports, knowing the cost of the material; that the papers were submitted first to Mr. McIlhenny, then to Mr. Lansden, and then to Mr. Leetch; that it is the daily report they looked at, and at the end of the month witness made up a statement from the daily reports.

And thereupon said witness further testified, on cross-examination, that these papers were not preserved; that he kept a record of all materials used and the cost of the oil that is consumed there; that sometimes he saw the oil bills and sometimes he did not; that these statements are a mere matter of record, to show whether there was a falling off or improvement in the business of the company, and that they are not preserved, that he was aware of; that he does not know what became of them after they left witness' office or whether they are preserved in the company's office or not.

And thereupon the plaintiff, THOMAS G. LANSDEN, was recalled for further cross-examination and testified that he resigned from the gas company on the 1st of June, 1893; that in the summer of 1893 he did not go to Baltimore to attend a dinner or a party given to the visiting engineers; that he was in Maine at that time with his sick wife; that he continued his visits to the office of the gas company to get his mail clear up to the time of this publication; that sometimes mail would come to him; that some people did not know that he had left the works and some of the mail still came there; that he did not go to Baltimore within three weeks after his resignation from the gas company; that he passed through Baltimore on his way to New York with his wife; that he does not recollect going to Baltimore within three or four weeks; that he had some business there with a concern—Bartlett, Hayward & Co., gas constructors—and may have gone there; that within three or four weeks after his resignation as superintendent of the gas company he did not come down into the complaint-room, where Mr. Holden, Mr. Entwistle, Mr. Falls, Mr. Hart, and Mr. Cash were present, and did not say to them that "he was going to make it hot for the gas company this winter up on the Hill;" that he left here immediately—within ten days or two weeks after his resignation—and took his wife up to Maine; that he never said

"the gas company has got the best of him now, but that he
59 was going to meet them on the Hill in the winter;" that he never though- of such a thing; that he went to the office to clear up that publication; that he does not recollect of ever talking to Mr. Hart about meeting him "up on the Hill;" that he was not in the habit of making such threats with the clerks; that he was not here that summer; that he was away until along in September, and then went to Chicago; that he was here a few days after his resignation; that he then went up into Maine in June and staid there until some time in September; that he then came back with his wife and immediately went to Chicago with her and returned here some time in November or December of that year; that he does not remember exactly the date he went away; it was eight or ten days after he resigned; that he remained here fixing up his business for about eight or ten days; that he was a witness in the case of Eckloff against the gas company; that he does not remember that he was under subpœnae in the case of Eckloff against the gas company and remained here through the month of June; that he knows he left here in June, but does not remember what date; that he remained here for that case to come up at the request of the gas company, but was never subpœnaed; that he may have been subpœnaed, but does not recollect. He remained here because he was in that case; he was one of the victims of the explosion.

And thereupon the defendant-, further to maintain the issues upon their part joined, produced as a witness one THOMAS F. HOLDEN, who testified that about two weeks after the resignation of Mr. Lansden—one afternoon after Mr. Lansden returned from Baltimore—witness came downstairs on his way home and went into the complaint department, where Mr. Falls, Mr. Entwistle, and Mr. Hart were present; that during the conversation that ensued Mr. Lansden said that he had been working for the gas company, but that he was now working for the consumers, and he said that he would "meet them up on the Hill;" that that was all he said in regard to the company. He said about himself that he had been offered a position by Bartlett and Hayward to superintend the construction of some works at a salary of $2,500 a year, but he had told them he had not had a holiday for thirty years and he wasn't anxious to take a job that wouldn't pay him more than that after working for $5,000 a year so long.

And thereupon the said witness, on cross-examination, testified that this conversation was two or three weeks after Mr. Lansden's resignation, in the year 1894; that he fixes that date because it was around the inauguration of President Cleveland; that it was the June following Mr. Cleveland's inauguration; that witness does not know what Lansden had been to Baltimore about; that he did not tell witness it was in connection with these visiting engineers; that at that time witness' position with the company was mechanical draftsman; that he did not mention the conversation which occurred at that time to anybody; there were others present; that he

60 did not mention this conversation until two or three weeks ago, when he was asked if he had ever heard Mr. Lansden make any threats against the company.

And thereupon the defendants, further to maintain the issues on their part joined, produced as a witness one R. W. FALLS, who testified that he is a clerk in the employ of the gas company, and his office is in the main building; that he knows the plaintiff, Mr. Lansden, very well; that he remembers the time of his resignation from the gas company; that shortly after the resignation of Mr. Lansden—some time in June—in the presence of Mr. Entwistle, Mr. Holden, the two Harts, Mr. Lansden said that he had been working for the gas company for the last thirty years, and now he was going to work for the consumers, and he would meet them on Hill next winter; that he also said something about having the price of gas reduced; that he said he would bring the gas down to one dollar.

And thereupon the said witness, on cross-examination, further testified that he was in charge of the complaint department, in the basement; that he has mentioned this conversation several times, but the first time that he remembers mentioning it to anybody was in the past two or three weeks; that he thinks he spoke to several persons about it, but cannot state when or where it was; that he told Mr. Webb about it when he was sent for to ascertain if he recollected what Lansden had said upon that occasion; that Lansden was a friend of theirs and he did not think it necessary to say anything about it; that he took no regular steps to inform his superior officers of what Lansden had said; that on that occasion Lansden also said that he had just come from Baltimore, where he had met a party of gentlemen who had had a good time; that he did not tell witness that these men were gas engineers.

And thereupon the defendant-, further to maintain the issues upon their part joined, produced as a witness one ISAAC H. ENTWISTLE, who, having been duly sworn, testified that in the year 1893 he was the night clerk at the complaint office; that about a week or ten days after the resignation of Mr. Lansden, in June, 1893, in the presence of Mr. Falls, Mr. Holden, the two Harts—William F. and William—he heard Mr. Lansden say that he was going to meet the company up on the Hill next winter; that they were having a general conversation about having the price of gas reduced and the investigation in Congress; that Mr. Lansden came in and said that heretofore he had been working for the gas company, but now he was going to work in the interest of the consumer, and that he would meet the company up on the Hill next winter.

And thereupon the said witness, on cross-examination, further testified that the two Harts to whom he referred were employed by the gas company; that one was the clerk in the distribution office and the other was general inspector; that the distribution office is across the hall, on the same floor with the complaint office; that this conversation took place late in the afternoon; that witness had just

come on duty, and he was supposed to be there at four o'clock;
61 that Mr. Lansden also said that he had been to Baltimore to see Bartlett & Hayward; that he had had a good time there and had been drinking champagne; that this was the general conversation about the matter that was coming up before Congress; that they had offered a resolution, as witness believed, but does not know just what it was; that he does not know that any investigation had taken place in the summer of 1893. He thinks the resolution was offered in 1893, but there wasn't any investigation; that the date 1893 had been fixed in his mind because he was only night clerk from the first of April, 1893, he thinks, to the first of November, 1893; that then he took Mr. Falls' place; that he is positive it was during the time that he was night clerk this conversation took place; that he was sitting at the time behind the rail in witness' office, and after that he thinks he was never behind the rail; that Lansden came in the office several times, but he was always out in front of the rail; that this conversation was a very short time after he severed his connection with the company; that after he had heard Lansden make this threat against the company he did not do anything about it; that he did not think it was his duty to do anything; that he spoke to Mr. Poor, the treasurer of the company, just a short time before the trial, because he asked witness if he had heard any threats; that that was the first he knew about it.

And thereupon the defendant-, further to maintain the issues upon *its* part joined, produced as a witness one WILLIAM HART, who testified that he is clerk for the superintendent of the gas company, and that that was his occupation in 1893; that in June, he thinks, 1893, he heard Mr. Lansden say that "he would meet the company up on the Hill this winter;" that that was all he heard him say; that there were present on that occasion Mr. Falls, Mr. Entwistle, and Mr. Hart, a cousin of the witness.

And thereupon, on cross-examination, the said witness further testified that he was clerk to the superintendent of distribution, Mr. Wilson, and not clerk to the superintendent of the works; that he is not certain this conversation occurred in June; that it was shortly after Mr. Lansden resigned; that the year is fixed in his mind because that was the year Mr. Leetch took charge as general manager; that Mr. Leetch was not present during this conversation; that the conversation might have taken place in 1894 if Mr. Lansden was there; that he heard Mr. Lansden say nothing about having *being* to Baltimore on that occasion; that he did not report this conversation to anybody, but was asked about it by Mr. Poor, the treasurer of the company.

And thereupon the defendants, further to maintain the issues on their part, produced as a witness one WILLIAM F. HART, who, being first duly sworn, testified that he is an inspector of the Washington Gas Light Company and was such inspector in 1893; that in May,

62 1893, Mr. Lansden went to Chicago to attend the Washington Gas Association meeting, and on his return, or a few days after his return, tendered his resignation to the Washington Gas Light Company; that about a week after that, upon his return from Baltimore, one afternoon, in the basement of the office—in the complaint office—he, witness, heard Mr. Lansden remark that he would meet them on the Hill, or that he would see them on the Hill.

And thereupon, on cross-examination, in response to interrogatories propounded by counsel for the plaintiff, the witness testified that he did not report the matter to any one, but had forgotten all about it until Mr. Poor, the treasurer of the company, asked him about it two or three weeks ago; that he cannot fix the time when he asked him, but it was possibly two weeks ago—in the month of February; that he was not in the room during the entire conversation; that Mr. Falls and Mr. Holden and several others were present.

And thereupon the witness JOHN LEETCH was recalled, and, in response to further interrogatories, on cross-examination, propounded by counsel for the plaintiff, testified that he made copies of the several letters which he wrote to Mr. Brown in February and March of 1893 in the book at the office, in which he has the privilege of making copies for the general office work.

The witness thereupon identified the book in which the copies were made; that he (witness) does not know of any letters or personal or individual matters in this book prior to March 1st, 1894, or that do not relate to affairs of the gas company, except those of the same nature as those of the letters hereinbefore referred to.

And thereupon counsel for the defendants announced their testimony closed.

And thereupon the plaintiff, further to maintain the issues on his part joined, called in rebuttal the witness THOMAS G. LANSDEN, who testified that he was 62 years and 2 months of age; that he recollected a dinner that was given in Baltimore by the American Meter Company, inviting the association from Washington over there to dinner and to look through their new battery; that he attended only one such meeting in 1889 and one since that time, in 1894; that Bartlett and Hayward never offered him a position, and that he never said they did; that he, witness, went to them and asked them if they knew of any open position, and they recommended him to a position in New York as engineer in a large New York works; that at the time these questions and answers were written he had no office in the main building of the gas works, and that this memorandum was made up for Mr. McLeans at his office at the gas works, at the foot of G street; that no man can make up the record of the cost of gas from the engineer's book, because the records are not there; that the matter of the ascertainment of the exact cost of gas, as given in the questions and answers, is a

mere matter of book-keeping in the office, where there is a classification of accounts; that he, witness, never had any connection with the books of that office and never examined them,
63 and that it was no part of his duty to do so; that Mr. Bailey, he thinks, gave the figures by order of Mr. McLean; that he never looked over the books and never saw the books at any time during his entire connection with the company; that the most expensive item in the manufacture of gas would be oil in water gas and coal in coal gas; that he, witness, did not buy the oil; that he was not informed by the company as to the cost of oil, but it was purposely kept from him; that once a bill was sent to his office in which the man by mistake in putting down the number of gallons had put down the price; that he would know the cost of little expenses about the works, such as packing and oil for running the engine or pipe fittings, but would not know what it would be in a year; that he would certify such bills at the end of the month and they would be returned to the main office: that he, witness, never was furnished with a copy of the letter of March 1st by Mr. Bartol, the president, defining the duties of the superintendent; that he never saw it before and was never informed that his duties were defined by that letter; that he did not buy all the material except coal, as stated in said letter.

And thereupon, on cross-examination and in response to interrogatories propounded by the counsel for the defendants, said witness testified that he does not recollect that he was ever in the office of the gas company after the publication of the article in the Progressive Age, although he may have dropped in downstairs to ask if there was any mail; that he does not recollect that he was furnished with figures by Mr. Bailey for the purpose of getting up this paper; that if they had been figures made of his own knowledge they never would have gotten out of his mind; that Mr. Bailey never gave him the items of the cost of the various things that entered into the price of gas or the percentage, but the total cost; that the figures were given to him just as they appear in the paper, as 48.39 in the holder and 40.09 cents for distribution; that these were all the figures he ever got from Mr. Bailey, and that he, witness, does not know who worked out the percentages; that during the time he was connected with the Washington Gas Light Company he did not have the books and could not have worked out the percentages without them; that he never did work out the percentages; that in St. Louis he was an engineer and superintendent, and that he had more power in St. Louis than he had in Washington; that in St. Louis the book-keeper worked out the percentages, and that he never did work them out with his own hand; that annual reports were made out *in* the company when he was in St. Louis, and the percentage of cost in the holder and at the burner appeared in the annual report; that he did not make up the percentages, but they were made up under his supervision; that the cost per thousand feet was made up once a year for the annual report; that although he was here for seven years he did not make up the percentage of the cost of manufacture and dis-

tribution because he did not have the books; that when he went before the investigating committee of Congress in 1894 he was testifying in regard to the cost of making gas and the cost of dis-
64 tributing gas per thousand feet upon his general experience as a gas engineer of 30 years' standing; that he did not take into consideration his experience in Washington in making up the question as to the actual cost, because the books of the company showed very differently from his idea; that he, witness, made up his estimate for his testimony before the committee as to the cost in this city upon his general knowledge of the gas industry all over the country, and from his knowledge as an expert; that he did not testify to positive facts, but he said that gas could be put in the holder at from 30 to 32 cents; that such was his opinion as an expert, based upon his experience here and elsewhere; that he appeared before the committee as a citizen of Washington, invited to go before the committee; that he was asked if he had had any connection with the Washington Gas Light Company; that he did specify at what price, in his opinion, gas could be made, but that he did not know the actual cost.

And thereupon, on redirect examination and in response to interrogatories propounded by counsel for the plaintiff, said witness testified that from his experience as a gas engineer he knew what gas ought to cost, and from his monthly report he knew what it did cost to put it in the holder from month to month.

And thereupon counsel for the defendant admitted that about 90 per cent. of the letters in the book produced kept by Mr. Leetch at the office of the gas company, in which appeared its letter-press copy of the letters of Leetch to Brown of Feb'y 13, 1894, Feb'y 20, 1894, and of March 24, 1894, were in the handwriting of Mr. Bailey, and signed by him as secretary, and that all of the letters in said book were signed officially, either by Bailey as secretary or Orme as assistant secretary, or Leetch general manager.

And thereupon counsel for the plaintiff announced his testimony closed.

The foregoing was all the evidence in the case in behalf of either the plaintiff or the defendants.

And thereupon, upon all the evidence hereinbefore set forth, the defendants, by their counsel, moved the court to instruct the jury to return a verdict for the defendants, but the court overruled the said motion, and counsel for the defendants noted an exception to the said ruling of the court.

And thereupon the plaintiff, by his counsel, prayed the court to instruct the jury as follows:

1. If the jury believe from the evidence that the letter dated February 13, 1894, referred to in the deposition of E. C. Brown and purporting to be signed by the defendant John Leetch, was in fact written by said defendant and by him forwarded or sent to said Brown, and that at the time of so writing and sending the said Leetch was the general manager of the defendant The Washington Gas Light Company, and that he so wrote and sent the said letter

in the course of his duties as such general manager of said company; and if they further find from the evidence that at the time of such writing and sending the said Brown was and
65 was known to the said Leetch to be the publisher of a newspaper or periodical called "The Progressive Age," and that said paper then was and was known to the said Leetch to be devoted to the interests of and to have an extensive circulation among gas producers and manufacturers throughout the country, then it is a question for the jury to determine, from all the facts and circumstances in the case as disclosed by the testimony, whether the said letter was or was not so written and sent for the purpose of supplying the data which it contains for a publication in said Progressive Age, or with the knowledge that it was likely to be or probably would be used for such purpose; and if the jury believe from the evidence that it was so written and sent maliciously for such purpose or with such knowledge, and that the article complained of in the plaintiff's declaration was in fact published and circulated in said Progressive Age, then, to the extent that the contents of said article were suggested and inspired by said letter, if the jury shall believe from the evidence that such contents were so suggested and inspired, the defendants The Washington Gas Light Company and Leetch are legally responsible for the publishing of said article; and if the jury believe from the evidence that said article falsely and maliciously charges the plaintiff with having testified contradictorily and falsely before any committee of Congress, from improper motives and in violation of his duty to the Washington Gas Light Company, his former employer, and that such charges were fairly and naturally suggested and inspired by said letter, then the plaintiff is entitled to a verdict against the defendants The Washington Gas Light Company and Leetch in this action.

2. If the jury shall find from the evidence each and every of the several questions of fact set forth and submitted to them in the foregoing first instruction in favor of the plaintiff, and if they shall further believe from the evidence that the figures as to the cost of the manufacture and distribution of gas set forth in the paper which has been referred to as the answers of Lansden in 1893, as they appear in said answers, were furnished Mr. Lansden from the books of the company for the purpose of being inserted in said paper and were not figures produced or arrived at by him personally, as to the cost of either such manufacture or distribution; and if they further believe from the evidence that the defendant Charles B. Bailey well knew that said figures were so furnished said Lansden from the company's books, and that they did not represent said Lansden's own estimate or knowledge of the cost of either the manufacture or the distribution of gas, but that the said defendant, Bailey, nevertheless, on being shown by Mr. Leetch the letter of E. C. Brown of February 12, asking information in reference to the testimony given by Mr. Lansden in 1894, called the attention of said Leetch to the said so-called Lansden answers of 1893, and gave them to him for the purpose of enabling him to communicate them

to said Brown as Lansden's own statement in regard to the actual cost of such manufacture and distribution, and as tending to impeach his sworn testimony before the committee of Congress in 1894, and maliciously intended that the same should be com-
66 municated to said Brown for the purpose aforesaid, then the jury would be justified in finding for the plaintiff against the defendant Bailey as well as against the defendants Leetch and the Washington Gas Light Company.

And thereupon the court, of its own motion, added the following to said instructions:

It will be observed that the two foregoing instructions require the jury to find that the said Leetch acted maliciously in order to justify the jury in finding against him and the Washington Gas Light Company, and that the said Bailey acted maliciously in order to justify a verdict against him. But if you believe from the evidence that they communicated any false and libelous matter about the plaintiff to said Brown, knowing it to be false, with the intent or consent, express or implied, that the same should be published, you will be justified in finding malice therefrom, unless you shall believe from the whole evidence that no malice existed. The meaning of malice as here used is not confined to its ordinary meaning of hatred or ill will, but means also an intention to injure the plaintiff or a reckless disregard of his rights and of the consequences which might result to him from the false publication.

3. If, under the testimony and the instructions of the court, your verdict shall be for the plaintiff as against any of the defendants, then it is your duty to award the plaintiff as against such defendants such damages as you believe from the evidence shall fully compensate him for the injuries, if any, suffered by him from the conduct of said defendants complained of in the declaration and which you shall find sustained by the proofs, in estimating which damages you may consider the language used in the publication complained of, in so far as you shall find from the evidence that said language was inspired by said defendants, the nature of the charges and imputations conveyed by said language, the vehicle used in giving publicity to the same, and the mental suffering, if any, which you find from the evidence has thereby been occasioned to the plaintiff.

And thereupon the court granted the foregoing separate and several instructions on behalf of the plaintiff; to which ruling of the court the defendants, by their counsel, then and there separately and severally excepted.

And thereupon the defendants, by their counsel, prayed the court to instruct the jury as follows:

1. The jury is instructed to find a verdict for the defendants.

2. The jury is instructed to find a verdict in favor of the defendant The Washington Gas-light Company.

3. The jury is instructed to find a verdict for the defendant John R. McLean, who is president of the said Washington Gas-light Company.

4. The jury is instructed to find a verdict for the defendant

Charles B. Bailey, who is or was secretary of said Washington Gas-light Company.

5. The jury is instructed to find a verdict for the defendant William B. Orme, who is or was the assistant secretary of said Washington Gas-light Company.

67 6. The jury is instructed to find a verdict for the defendant John Leetch, who is the general superintendent of the said Washington Gas-light Company.

But the court refused to grant any of the said instructions to the jury; to which ruling of the court the defendants, by their counsel, then and there separately and severally excepted to the ruling of the court to grant each of the said several instructions.

And thereupon the defendants, by their counsel, prayed the court to instruct the jury as follows:

7. If the jury shall find from the evidence that the defendants did not request or solicit the publication of any article in the Progressive Age of or concerning the plaintiff, and that the article set forth in the plaintiff's declaration was published without their knowledge, then their verdict should be for the defendants.

But the court refused to grant said instruction as prayed, but granted the same in a modified form, as follows:

7. If the jury shall find from the evidence that the defendants did not request, solicit, *intend, or inspire* the publication of any article in the Progressive Age of or concerning the plaintiff, and that the article set forth in the plaintiff's declaration was published without their knowledge *or procurement, directly or indirectly*, then their verdict should be for the defendants *and for each defendant not so participating in the publication thereof.*

To which ruling of the court in refusing to grant said instruction as prayed and in granting the same as modified by the court the defendants, by their counsel, then and there separately and severally excepted.

And thereupon the defendants, by their counsel, prayed the court to instruct the jury as follows:

8. If the jury shall find from the evidence that the article entitled "The acrobatic performances of Lansden," as published in the issue of "The Progressive Age" of March, 1894, was not composed and published or procured to be composed and published by the defendants as an entirety, as charged by the *defendant* in this cause, then their verdict should be for the defendants.

But the court refused so to instruct the jury; to which ruling of the court the defendants, by their counsel, then and there excepted.

And thereupon the said defendants, by their counsel, prayed the court to instruct the jury as follows:

9. If the jury shall find that part or parts of said article as published in the Progressive Age are libelous which were not composed by the defendants or any of them, then the jury should not consider the same in assessing any damage against the defendants if they shall find any verdict whatever against the defendants.

But the court refused to instruct the jury as prayed and granted the instruction in a modified form, as follows:

9. If the jury shall find that part or parts of said article as published in the Progressive Age are libelous which were not composed *or inspired* by the defendants or any of them, then the jury should not consider the same in assessing any damage against the
68 defendants if they shall find any verdict whatever against *any one or more* of the defendants.

To which ruling of the court in refusing to grant the said instruction as prayed and in granting the same as modified by the court the defendants, by their counsel, then and there separately and severally excepted.

And thereupon the defendants, by their counsel, prayed the court to instruct the jury as follows:

10. If the jury shall find from the evidence that the letter of February 13, 1894, signed by John Leetch, general manager, was not written by him as such general manager and was not subsequently ratified or affirmed by the action of the board of directors of the defendant The Washington Gas-light Company, then said company cannot be bound by the said action of Leetch, and the jury must find a verdict in its favor.

But the court refused so to instruct the jury as prayed and granted said instruction in a modified form, as follows:

10. If the jury shall find from the evidence that the letter of February 13, 1894, signed by John Leetch, general manager, was not written by him as such general manager *and for and in behalf of said Washington Gas-light Company, but personally and for himself only*, and was not subsequently ratified or affirmed by the action of the board of directors of the defendant The Washington Gas-light Company, then said company cannot be bound by the said action of Leetch, and the jury must find a verdict in its favor.

To which ruling of the court in refusing to grant said instruction as prayed and to the granting of the said instruction as modified by the court the defendants, by their counsel, then and there separately and severally excepted.

And thereupon the defendants, by their counsel, prayed the court to instruct the jury as follows:

11. If the jury find from the evidence that the letter of February 13, 1894, signed by John Leetch, general manager, was not written by him in the discharge of his authorized duties as such general manager and without the knowledge of the other defendants in this case, then the jury must find that such act was the individual act of the said Leetch, and they must find in favor of the other defendants.

But the court refused so to instruct the jury, and modified the said instruction as follows:

"I have modified that one, gentlemen, by saying to you that the word 'authorized' there is not to be understood as meaning that the company, by its board of directors or by its officers, must have expressly authorized him to write the letter. That is not necessary. If he was acting as general manager of the company and this particular kind or class of correspondence was within the purview of his general powers of general management, then the company is

bound by it, although they did not expressly authorize it. That is what that means."

To which ruling of the court in refusing to grant said instruction as prayed and to the granting of the same as modified
69 by the court the defendants, by their counsel, then and there separately and severally excepted.

And thereupon the defendants, by their counsel, prayed the court to instruct the jury as follows:

12. If the jury find that the letter of February 13, 1894, signed by John Leetch, general manager, contained a truthful statement of facts and could not, from a fair interpretation of its language, be said to convey the impression that the plaintiff had given testimony under oath before a committee of Congress in February, 1893, then the said letter does not furnish a basis for the libel complained of, and they must find for the defendants.

But the court refused so to instruct the jury and granted said instruction in a modified form, as follows:

12. If the jury find that the letter of February 13, 1894, signed by John Leetch, general manager, contained a truthful statement of facts and could not, from a fair interpretation of its language, be said to convey the impression that the plaintiff had given testimony before a committee of Congress in February, 1893, then the said letter does not furnish a basis for the libel complained of, and they must find for the defendants.

To which ruling of the court in refusing to grant said instruction as prayed and to the granting thereof as modified by the court the defendants, by their counsel, then and there separately and severally excepted.

And thereupon the defendants, by their counsel, prayed the court to instruct the jury as follows:

13. The jury is instructed that the letter of February 13, 1894, signed John Leetch, general manager, is a privileged communication, and before it can find a verdict in this case against the defendants it must find the existence of malice against the plaintiff—that is, an intent to injure the plaintiff—as the motive of the defendant or defendants in writing such letter, and its verdict must be in favor of any and all the defendants in whom no malice or intent to injure the plaintiff is shown to exist at the time of the writing of the said letter.

But the court refused so to instruct the jury; to which ruling of the court the defendants, by their counsel, then and there excepted.

And thereupon, at the request of counsel for the defendants, the court granted the following instruction:

14. The jury is instructed that the plaintiff is not entitled to recover punitive damages in this case against the defendant company or against either of the other defendants, but only such damages as the evidence proves that he has sustained on account of the action of the said defendants, if any.

And thereupon counsel for the defendants prayed the court to grant the following instruction to the jury:

15. The jury is instructed that if the plaintiff has not proved that

he was prevented from getting employment by the reason of the publication of this article, and that that reason, to wit, this publication, was given to him by those parties from whom he sought
70 employment as the reason for their refusing to employ him, then he can recover only nominal damages.

But the court refused to grant said instruction to the jury; to which ruling of the court the defendants, by their counsel, then and there separately and severally excepted.

And thereupon the defendants, by their counsel, prayed the court to instruct the jury as follows:

16. If the jury find from the evidence that the letter written by the defendant John Leetch of February 13, 1894, to the editor of the Progressive Age was neither originally authorized or approved by any vote, order, or other action of the board of directors of the Washington Gas-light Company or was not subsequently ratified by the said board of directors, then their verdict should be in favor of the said Washington Gas-light Company.

17. If the jury find from the evidence that the plaintiff did not make any effort to secure employment for a year following his resignation as superintendent of the defendant company in June, 1893, then, and as this action was commenced on June 9, 1894, and substantially within such year, *then* the plaintiff, having failed to allege or prove special damage, cannot recover for any damage accruing to him subsequent to the commencement of this action, and their verdict, if at all, should be for nominal damages.

18. If the jury find that the letter written by the defendant Leetch to the editor of the Progressive Age of February 13, 1894, taken in connection with the admission of counsel for the plaintiff that questions are put by and answered before committees of Congress by persons who are not put under oath, does not clearly charge that the statements made by the plaintiff in 1893 were so made under oath, then the defendants nor any of them cannot be charged with imputing to the plaintiff the offense of committing perjury, and the verdict should be for the defendants; or, if they should find at all for the plaintiff, they must find nominal damages merely.

19. If the jury believe that the general publication of the testimony given by the plaintiff in 1894 in the public prints was the real cause of the plaintiff's failure to thereafter obtain employment from persons or corporations engaged in the manufacture of gas or to receive any reply to his applications to any such persons or corporations for such employment and such result was not accomplished alone by the publication of the article in the Progressive Age, then, if they find for the plaintiff, they should give no verdict for damages arising from his failure to secure employment.

20. If the jury find from the evidence that the article set out in the declaration as published in the Progressive Age of March 1, 1894, differs materially from the letter of February 13, 1894, signed by John Leetch, then the jury must find a verdict for the defendant.

21. If the jury find from the evidence that Mr. Lansden went to the secretary at the request of the president for the purpose of fur-

71 nishing the president with a computation of the cost of making gas, and that Mr. Bailey furnished him with the footings of the various expense items asked for by Lansden, and that Lansden himself made the calculation, then the items as to the cost of gas in 1893, contained in the paper in his own handwriting, was substantially the statement of Lansden as to the cost of gas to the Washington Gas-light Company.

But the court refused to grant each or any of the said instructions; to which ruling of the court the defendants, by their counsel, then and there separately and severally excepted as to each and every one of the said instructions.

And thereupon the court, of its own motion, as a substitute for defendants' prayer No. 15, instructed the jury as follows:

If the jury shall find for the plaintiff against one or more of the defendants, and shall also find from the evidence that the plaintiff has not been prevented from obtaining employment by the publication of the article complained of, but that if he has failed to obtain employment such failure arose from the evidence which he gave before the congressional committee in 1894 or from any other cause than the publication of said article or such part or parts thereof as the defendants against whom you may find are responsible for, then you should not consider his failure to find employment in determining the damages to be awarded the plaintiff.

To which ruling of the court in granting the said instruction in lieu of the defendants' prayer No. 15 the defendants, by their counsel, then and there duly excepted.

And thereupon the court, of its own motion, instructed the jury as follows:

GENTLEMEN OF THE JURY: This is an action by the plaintiff against the defendants to recover damages alleged to have resulted to the plaintiff by reason of a publication in the "Progressive Age" which is said to be libelous, and for the publication of which, or at least portions of which, it is claimed that the defendants or some of them are liable.

In order for the plaintiff to recover, it must appear to you not only that the publication was libelous, but that the defendants or some of them are responsible for the libelous portions, or at least some of the libelous portions, of the article, and that damages resulted to the plaintiff by reason of such publication. A publication is said in law to be libelous when it charges the plaintiff with the commission of a crime or with any action, conduct, or language that would naturally tend to hold him up to public scandal or disgrace.

That portions of this article complained of, published in the Progressive Age, are of that character there can be no doubt. There is no doubt of its libelous character in some particulars.

The most important question for your consideration, however, is whether the defendants or either of them, and, if so, which and who of them, are liable for the publication. In order for a person to be

liable for a publication they need not write the article themselves; they need not necessarily have control of the paper in which it is published. If they have any agency in the publication; if they request the publication, directly or indirectly, and the publication takes place because of that request or incitement or inducement thereto held out or requested by the defendant, such defendant is as liable as if he had written, composed, or expressly requested the publication or, indeed, had made the publication himself.

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Now, the counsel for the parties on either side here have asked me to instruct you, in language which they have employed themselves, upon the details of that question, and I will read those instructions which I have granted without attempting to go over the subject generally myself further than I have already done. What I have said has been to call your attention particularly to the important question you have to determine, and that is whether these defendants or any one of them, under the facts of this case, are chargeable with having published or caused or procured the publication of any part of any of the libelous parts of this libelous publication.

On behalf of the plaintiff I have granted two instructions directed to that particular question, and I now read you the first one:

"If the jury believe from the evidence that the letter dated February 13, 1894, referred to in the deposition of E. C. Brown and purporting to be signed by the defendant John Leetch, was in fact written by said defendant and by him forwarded or sent to said Brown, and that at the time of so writing and sending the said Leetch was the general manager of the defendant The Washington Gas-light Company, and that he so wrote and sent the said letter in the course of his duties as such general manager of said company; and if they further find from the evidence that at the time of such writing and sending the said Brown was, and was known to the said Leetch to be, the publisher of a newspaper or periodical called 'The Progressive Age,' and that said paper then was, and was known to the said Leetch to be, devoted to the interests of, and to have an extensive circulation among, gas producers and manufacturers throughout the country, then it is a question for the jury to determine, from all the facts and circumstances in the case, as disclosed by the testimony, whether the said letter was or was not so written and sent for the purpose of supplying the data which it contains for a publication in said Progressive Age or with the knowledge that it was likely to be or probably would be used for such purpose; and if the jury believe from the evidence that it was so written and sent maliciously for such purpose or with such knowledge, and that the article complained of in the plaintiff's declaration was in fact published and circulated in said Progressive Age, then, to the extent that the contents of said article were suggested and inspired by said letter, if the jury shall believe from the evidence that such contents were so suggested and inspired, the defendants The Washington Gas-light Company and Leetch are legally responsible for the publishing of said article; and if the

jury believe from the evidence that said article falsely and maliciously charges the plaintiff with having testified contra-
73 dictorily and falsely before any committee of Congress from improper motives and in violation of his duty to the Washington Gas-light Company, his former employer, and that such charges were fairly and naturally suggested and inspired by said letter, then the plaintiff is entitled to a verdict against the defendants The Washington Gas-light Company and Leetch in this action."

The second instruction which I have granted at the request of counsel for the plaintiff on this point is in the following language:

"If the jury shall find from the evidence each and every of the several questions of fact set forth and submitted to them in the foregoing first instruction in favor of the plaintiff; and if they shall further believe from the evidence that the figures as to the cost of the manufacture and distribution of gas set forth in the paper which has been referred to as the answers of Lansden in 1893, as they appear in said answer, were furnished Mr. Lansden from the books of the company for the purpose of being inserted in said paper and were not figures produced or arrived at by him as to the cost of either such manufacture or distribution; and if they further believe from the evidence that the defendant Charles B. Bailey well knew that said figures were so furnished said Lansden from the company's books, and that they did not represent said Lansden's own estimate or knowledge of the cost of either the manufacture or the distribution of gas, but that the said defendant, Bailey, nevertheless, on being shown by Mr. Leetch the letter of E. C. Brown of February 12, asking information in reference to the testimony given by Mr. Lansden in 1894, called the attention of said Leetch to the said so-called Lansden answers of 1893 and gave them to him for the purpose of enabling him to communicate them to said Brown as Lansden's own statement in regard to the actual cost of such manufacture and distribution and as tending to impeach his sworn testimony before the committee of Congress in 1894 and maliciously intended that the same should be communicated to said Brown for the purpose aforesaid, then the jury would be justified in finding for the plaintiff against the defendant Bailey, as well as against the defendants Leetch and The Washington Gas Light Company."

You will notice, gentlemen, that the first instruction is aimed at informing you under what circumstances you may or may not find against the Washington Gas-light Company and Leetch. The second is designed to bring to your attention the state of facts under which you may or may not find against the defendant Bailey.

There is no prayer granted or asked by the plaintiff's counsel directed specially to informing you as to whether you may or may not find against the other two defendants, McLean and Orme, and I do not understand that he earnestly insists upon a verdict against them personally. I can only say to you that the evidence tending to show that they are personally liable is slight, and I submit the case to you with that expression, leaving it to your discretion to find for or against them, as you may think best.

I do not understand, however, that the plaintiff seriously claims a verdict against them personally.

74 It will be observed that the two foregoing instructions require the jury to find that the said Leetch acted maliciously in order to justify the jury in finding against him and the Washington Gas-light Company, and that the said Bailey acted maliciously in order to justify a verdict against him; but if you believe from the evidence that they communicated any false and libelous matter about the plaintiff to said Brown, knowing it to be false, with the intent or consent, express or implied, that the same should be published, you will be justified in finding malice therefrom, unless you shall believe from the whole evidence that no malice existed. The meaning of malice as here used is not confined to its ordinary meaning of hatred or ill will, but means also an intention to injure the plaintiff or a reckless disregard of his rights and of the consequences which might result to him from the false publication.

Now, gentlemen, upon this point of the liability of the defendants or any of them for this publication or any part of it, I have granted four instructions on behalf of the defendants, which I will now read to you, the first one being numbered 7 in their series. It is as follows:

"If the jury shall find from the evidence that the defendant did not request, solicit, intend or inspire the publication of any article in 'The Progressive Age' of or concerning the plaintiff, and that the article set forth in the plaintiff's declaration was published without their knowledge or procurement, direct or indirect, then their verdict should be for the defendants and for each defendant not so participating in the publication thereof."

The next one for the defendants is numbered 10 in their series, and reads as follows:

"If the jury shall find from the evidence that the letter of February 13, 1894, signed by John Leetch, general manager, was not written by him as such general manager and for and in behalf of said Washington Gas-light Company, but personally and for himself only, and was not subsequently ratified or affirmed by the action of the board of directors of the defendant The Washington Gas-light Company, then said company cannot be bound by the said action of Leetch, and the jury must find a verdict in its favor."

The next one is numbered 11, and reads as follows:

"If the jury find from the evidence that the letter of February 13, 1894, signed by John Leetch, general manager, was not written by him in the discharge of his authorized duties as such general manager and without the knowledge of the other defendants in this case, then the jury must find that such act was the individual act of the said Leetch, and they must find in favor of the other defendants."

I have modified that one, gentlemen, by saying to you that the word "authorized" there is not to be understood as meaning that the company, by its board of directors or by its officers, must have expressly authorized him to write the letter. That is not necessary. If he was acting as general manager of the company and this par-

ticular kind or class of correspondence was within the purview
75 of his general powers of general management, then the company is bound by it, although they did not expressly authorize it. That is what that means.

The 12th, which has been granted, is in this language:

"If the jury find that the letter of February 13, 1894, signed by John Leetch, general manager, contained a truthful statement of facts and could not, from a fair interpretation of its language, be said to convey the impression that the plaintiff had given testimony before a committee of Congress in February, 1893, then the said letter does not furnish a basis for the libel complained of, and they must find for the defendants."

You will see, gentlemen, that these instructions on both sides submit to your judgment a construction of this letter of Leetch's of the 13th of February, 1894, as to whether you will or will not draw the inference from that letter that the parties authorizing it and sending it intended and expected the contents of it to be published in this publication that is complained of, and whether this publication, the libelous part of it, is fairly inferred and obtained from that letter. Those are the important questions.

Now, gentlemen, that leaves only the question of damages. Of course, if you find for all the defendants, if you find that none of the defendants are liable for this publication, you would find for the defendants, and that would end your duties in this case. You would not have to consider the question of damages; but if you should take the other view and find that the defendants or any one or more of them are liable for this publication under the instructions I have given you and the evidence, then it would be necessary for you to determine the amount of damages which should be awarded by you in favor of the plaintiff against the defendants or such of them as you should find; and upon that question of the amount of damages I have granted some instructions at the instance of both parties, and I now give you the one asked for by the counsel for the plaintiff, which is numbered 3 in his series:

"If under the testimony and the instructions of the court your verdict shall be for the plaintiff as against any of the defendants, then it is your duty to award the plaintiff, as against such defendants, such damages as you believe from the evidence shall fully compensate him for the injuries, if any, suffered by him from the conduct of said defendants complained of in the declaration and which you shall find sustained by the proofs, in estimating which damages you may consider the language used in the publication complained of in so far as you shall find from the evidence that said language was inspired by said defendants, the nature of the charges and imputations conveyed by said language, the vehicle used in giving publicity to the same, and the mental suffering, if any, which you find from the evidence has thereby been occasioned to the plaintiff."

In the same connection, I give you one numbered 9 in the series of the defendants, which is as follows:

"If the jury shall find that part or parts of said article as pub-

lished in the 'Progressive Age' are libelous which were not
76 composed or inspired by the defendants or any of them, then the jury should not consider the same in assessing any damage against the defendants if they shall find any verdict whatever against any one or more of the defendants."

And number 14 in the same series:

"The jury is instructed that the plaintiff is not entitled to recover punitive damages in this case against the defendant company or against either of the other defendants, but only such damages as the evidence proves that he has sustained on account of the action of the said defendants, if any."

The plaintiff does not contend that he is entitled to recover what is called punitive damages, but only compensatory damages. Compensatory damages are those which will compensate and pay fairly the plaintiff for such injury and suffering as he has sustained. Punitive damages would permit you to go beyond that and, after you had fully compensated the plaintiff, to put on something to punish the defendant, but that is not claimed in this case, and you will not consider damages, if you should find for the plaintiff, beyond the question of what it will be fair and reasonable to give him in compensation for such injuries and loss as he has sustained in his business and his reputation and his feelings.

There was another prayer asked by the defendants on this question of damages which was not in accordance with my notion, and I have written one of my own covering the point, which I will now give you. It takes the place of the one numbered 15 in their series:

"If the jury shall find for the plaintiff against one or more of the defendants, and shall also find from the evidence that the plaintiff has not been prevented from obtaining employment by the publication of the article complained of, but that if he has failed to obtain employment such failure arose from the evidence which he gave before the Congressional committee in 1894 or from any other cause than the publication of said article or such part or parts thereof as the defendants against whom you may find are responsible for, then you should not consider his failure to find employment in determining the damages to be awarded the plaintiff."

In other words, gentlemen, if the publication of the article did not prevent him from obtaining employment, but something else did, then the defendants are not liable for that element of damages.

There has been a good deal said here about "dollar gas" and "cheap gas" and "high gas," and you, gentlemen, may be like all the rest of us and have some notion or feeling of your own upon that subject, but whatever your notion may be or whatever your feeling may be I need not caution you that that is to have no influence whatever, either in inducing you to find a verdict for the defendants or for the plaintiff, or any influence whatever upon the amount of damages you shall award, if you should find for the plaintiff. We are not trying the question of whether the gas com-

pany ought or should or may or might furnish gas cheaper
77 than they are doing. We have only to do with the question whether this gas company or the officers of it or any of them are liable for the publication of this libel. If so, they should be held liable for it; if they are not, they should not, and if they are liable for it, any of them, then your verdict should hold them liable only for reasonable and fair compensatory damages and for nothing more.

And thereupon the defendants, by their counsel, again separately and severally excepted to the repetition in the charge of each of the several prayers granted on behalf of the plaintiff and to the granting of each of the prayers of the defendant- as modified by the court.

And thereupon the defendants, by their counsel, separately and severally excepted to the following portions of said charge:

"In order for the plaintiff to recover, it must appear to you not only that the publication was libelous, but that the defendants or some of them are responsible for the libelous portions, or at least some of the libelous portions, of the article, and that damages resulted to the plaintiff by reason of such publication. * * *

"That portions of this article complained of, published in the Progressive Age, are of that character there can be no doubt. There is no doubt of its libelous character in some particulars."

"In order for a person to be liable for a publication they need not write the article themselves and need not necessarily have control of the paper in which it is published. If they have any agency in the publication; if they request the publication directly, or indirectly, and the publication takes place because of that request or incitement or inducement thereto held out or requested by the defendant, such defendant is as liable as if he had written, composed, or expressly requested the publication or, indeed, had made the publication himself."

And be it further remembered that each of the separate and several exceptions taken by counsel for the respective defendants to each of the separate and several rulings of the court during the progress of said trial; each one of said separate and several exceptions taken by counsel for the respective defendants to the granting by the court of each of the prayers granted on behalf of the plaintiff; each of the said separate and several exceptions taken by counsel for the respective defendants to the refusal of the court to grant each of the prayers asked on behalf of the defendant- which were refused by the court; each of the said separate and several exceptions taken to the granting of said separate and several instructions on behalf the defendants, with modifications thereto made by the court; each of the said separate and several exceptions taken by counsel for the respective defendants to the charge of the court to the jury, as hereinbefore set forth, were so taken by counsel for the respective defendants then and there before the jury retired separately and severally, and said exceptions and each of them were then and there separately and severally duly noted upon the minutes of the justice presiding at the trial, and counsel for the respect-

ive defendants then and there prayed the court and now pray the court to sign and seal this bill of exceptions, to have the same
78 force and effect as if each of the said exceptions had been separately and severally set forth in a separate bill of exceptions, and, at the request of said counsel for the defendants, the same is accordingly signed and sealed and made a part of the record in this cause, now for then, this sixth day of May, A. D. 1896.

CHAS. C. COLE, [SEAL.]
Asso. Justice.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing pages, numbered from 1 to 153, inclusive, to be true copies of originals in cause No. 36410, at law, wherein Thomas C. Lansden is plaintiff and The Washington Gas Light Company (a corporation); John R. McLean, president; Charles B. Bailey, secretary; William B. Orme, assistant secretary, and John Leetch, general superintendent, are defendants, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 18th day of May, A. D. 1896.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 583. The Washington Gas Light Company, Charles B. Bailey, and John Leetch, appellants, *vs.* Thomas G. Lansden. Court of Appeals, District of Columbia. Filed May 23, 1896. Robert Willett, clerk.

79 TUESDAY, *October 13th, A. D.* 1896.

THE WASHINGTON GAS LIGHT COMPANY, CHARLES B. BAILEY, and JOHN LEETCH, Appellants, *vs.* THOMAS G. LANSDEN. } No. 583.

Upon consideration of a suggestion of the diminution of the record filed by Mr. J. J. Darlington, of counsel for the appellee, in the above-entitled cause, from the supreme court of the District of Columbia, praying the court for a writ of certiorari directed to the justices of the said supreme court of the District of Columbia, commanding them to send to this court forthwith a true copy of the papers enumerated in a motion filed in this cause October 13, 1896, it is ordered that said writ issue as prayed.

80 *Return to Writ of Certiorari.*

Court of Appeals of the District of Columbia, October Term, 1896.

THE WASHINGTON GAS LIGHT COMPANY, CHARLES B. BAILEY, and JOHN LEETCH, Appellants,
vs.
THOMAS G. LANSDEN. } No. 583.

Appeal from the supreme court of the District of Columbia.

Filed October 13, 1896.

THE UNITED STATES OF AMERICA, *ss:*

[Seal Court of Appeals, District of Columbia.]

The President of the United States of America to the justices of the supreme court of the District of Columbia, Greeting:

Whereas in a certain suit in said supreme court between Thomas G. Lansden, plaintiff, *vs.* The Washington Gas Light Company (a corporation); John R. McLean, president; Charles B. Bailey, secretary; William B. Orme, assistant secretary, and John Leetch, general superintendent, defendants, law, No. 36410, which suit was removed to the Court of Appeals of the District of Columbia by virtue of an appeal agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

1. "The motion for a new trial presented by defendants and the grounds of said motion;"

81 2. "The appeal bond filed in this cause:"

You therefore are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Court of Appeals, so that you have the same, together with this writ, before the said Court of Appeals forthwith.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, the 13th day of October, A. D. 1896.

ROBERT WILLETT,
Clerk Court of Appeals of the District of Columbia.

Motion for New Trial.

Filed March 10, 1896.

In the Supreme Court of the District of Columbia

THOMAS G. LANSDEN
vs.
WASHINGTON GAS LIGHT COMPANY. } At Law. No. 36410.

Comes now the defendants, The Washington Gas Light Company, Charles B. Bailey, and John Leetch, and move the court to set aside

the verdict and grant a new trial in the above-entitled cause for the following reasons:

First. Because the verdict is contrary to the evidence.

Second. Because the verdict is contrary to the law.

Third. Because the verdict against the defendant The Washington Gas Light Company is not sustained by the evidence.

Fourth. Because the verdict against the defendant Charles B. Bailey is not sustained by the evidence.

Fifth. Because the verdict against the defendant John Leetch is not sustained by the evidence.

Sixth. Because *the* errors of law in the rulings of the judge presiding at the trial which were excepted to by the defendants.

Seventh. Because of errors of law in the instructions to the jury by the judge presiding at the trial and *accepted* to by the defendants.

Eight-. Because of errors of law by the judge presiding at the trial in overruling the motion of the defendants, made at the close of the testimony, to take the case away from the jury and direct a verdict for the defendants.

Ninth. Because the damages awarded by the jury are excessive.

BRITTON & GRAY,
WEBB & WEBB & LINDSLEY,
Attorneys for Defendants.

82 *Bond for Appeal.*

Filed April 24, 1896.

In the Supreme Court of the District of Columbia.

THOMAS G. LANSDEN
vs.
WASHINGTON GAS LIGHT COMPANY *et al.* } At Law. No. 36410.

Know all men by these presents that we, Washington Gas Light Company, Charles B. Bailey, and John Leetch, as principals, and American Surety Company of New York, as surety, are held and firmly bound unto the above-named Thomas G. Lansden in the full sum of twenty thousand dollars, to be paid to the said Thomas G. Lansden, his executors or administrators or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, successors, or assigns, firmly by these presents.

Sealed with our seals and dated this 22nd day of April, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas, the above-named Washington Gas Light Company, Charles B. Bailey, and John Leetch have prosecuted an appeal to the Court of Appeals of the District of Columbia to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is such that if the

above-named Washington Gas Light Company, Charles B. Bailey, and John Leetch shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WASHINGTON GAS LIGHT CO.
[SEAL.] JOHN R. McLEAN, *President.*
CHARLES B. BAILEY. [SEAL.]
JOHN LEETCH. [SEAL.]

Attest: WILLIAM B. ORME, *Secretary.*

AMERICAN SURETY COMPANY
OF NEW YORK,
[SEAL.] By DAVID B. SICKELS,
2d Vice-President.

Attest: CORTLANDT S. VAN RENSSELAER, *Attorney.*
—— ——, *Secretary.*

Sealed and delivered in presence of—
GEO. W. WHITWELL.
HOWARD ALLISON,
As to Am. S. Co.

Approved the 24th day of April, 1896.
CHAS. C. COLE,
Asso. Justice S. C. D. C.

83 Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify, in obedience to the writ of certiorari hereto attached and returned herewith, that the foregoing are true and correct copies of the motion for a new trial and the bond for appeal to the Court of Appeals of the District of Columbia filed in the case of Thomas G. Lansden *vs.* The Washington Gas Light Company *et al.*, No. 36410, at law, containing the matter omitted from the transcript of the record heretofore transmitted to said Court of Appeals.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said supreme court of the District of Columbia the 13th day of October, A. D. 1896.

JOHN R. YOUNG,
Clerk Supreme Court, District of Columbia.

(Endorsed:) No. 583. The Washington Gas Light Co. *et al.*, appellants, *vs.* Thomas G. Lansden. Return to writ of certiorari. Court of Appeals, District of Columbia. Filed Oct. 13, 1896. Robert Willett, clerk.

84 TUESDAY, *October 20th, A. D.* 1896.

THE WASHINGTON GAS LIGHT COMPANY, CHARLES B. BAILEY, and JOHN LEETCH, Appellants,
vs.
THOMAS G. LANSDEN. } No. 583.

The argument in the above-entitled cause was commenced by Mr. W. D. Davidge, attorney for the appellants.

WEDNESDAY, *October 21st, A. D.* 1896.

THE WASHINGTON GAS LIGHT COMPANY, CHARLES B. BAILEY, and JOHN LEETCH, Appellants,
vs.
THOMAS G. LANSDEN. } No. 583.

Upon motion of Mr. John S. Webb, thirty minutes' additional time is allowed each side for argument. The argument in the above-entitled cause was continued by Mr. J. J. Darlington, attorney for the appellee, and was concluded by Mr. John S. Webb, attorney for the appellants.

85 THE WASHINGTON GAS LIGHT COMPANY, CHARLES B. BAILEY, and JOHN LEETCH, Appellants,
vs.
THOMAS G. LANSDEN. } No. 583.

Mr. Chief Justice ALVEY delivered the opinion of the court:

This is an action for libel brought by Lansden, the appellee, against The Washington Gas Light Company, John R. McLean, its president, Charles B. Bailey, its secretary, William B. Orme, its assistant secretary, and John Leetch, its general superintendent. The declaration charges that the defendants did compose and publish, and did cause and procure to be composed and published, a certain libel, set out in the declaration, of and concerning the plaintiff, and of and concerning certain testimony by him given before a committee of Congress, in a certain newspaper or periodical called "The Progressive Age," printed in the city of New York.

The defendants all pleaded not guilty, and issue was joined on that plea. The verdict and judgment were for the plaintiff against the gas company, Bailey and Leetch, but there does not appear to have been any verdict or finding for or against the other defendants. This appeal is brought by the defendants against whom verdict and judgment were rendered.

The article alleged to be libelous is set out *in extenso* in the declaration, and also in the bill of exception. It is headed, "The acrobatic performances of Lansden." It is not pretended that any of the defendants actually composed the libel as published in "The Progressive Age," but it is contended that some of the defendants, at least, furnished the data, and procured or conduced to the composition and publication of the article complained of as libelous; and though

none of the defendants may have actually dictated the terms of the article, yet, it is contended, if they procured or conduced to the writing and publication of the libel, they are responsible therefor. In such case the libel is to be considered as published by their authority.

It appears that Lansden, the plaintiff, was in the employ of the defendant gas company as general superintendent of the gas works, from the 1st of November, 1886, until the 1st of June, 1893. He was by profession a gas engineer; his business being to construct and manufacture gas works and manufacture gas; and he had been engaged in that profession for about 30 years.

In January, 1893, action was taken by the House of Representatives looking to the reduction of the price of gas supplied by the defendant company to the Government buildings in the District of Columbia, to seventy-five cents per one thousand feet, and the plaintiff, Lansden, then in the employ of the gas company, was called upon by the president of that company to make a written statement of what he could testify to, if called as a witness before the committee of the House. He furnished such statement in his own handwriting, though he testifies and shows that some of the data thus furnished were supplied from the books of the gas company, for which he was in nowise responsible, and for the correctness of which he expressly disclaimed knowledge or responsibility at the time of delivering the statement to the president of the company. This statement, being placed in the hands of the president of the company, was thereupon placed in the care and keeping of Bailey, the secretary, to be preserved for future use. The plaintiff, however, was not called upon as a witness at that session of Congress; and, in the meantime, that is, on the 1st of June, 1893, the plaintiff left the employment of the gas company, and was succeeded in the office of general superintendent of the company by John Leetch,
86 one of the defendants. At the next session of Congress, that is, in 1894, an investigation was directed in respect of the reduction of the price of gas to one dollar, instead of one dollar and twenty-five cents per thousand feet, the then existing price. Before the committee of that session of Congress, the plaintiff appeared and gave testimony, and which, apparently, was in conflict with and contradictory of the estimates made and set forth in the preceding statement made and delivered to the president of the company in 1893.

In the trial of this case, the plaintiff testified that he prepared a memorandum, at the request of the president of the company, in 1893, in the form of questions and answers, except that, as originally submitted to the president, the memorandum contained nothing as to the cost of gas; that the president said to him, "You say nothing here about the cost of gas," and he told Mr. McLean that the cost of gas must come from him, the president, or from the secretary; that he was thereupon furnished with a statement, putting the cost of gas in the holder at 48.38 cents per thousand, and the cost of distribution at 40.09 cents per thousand; that the plaintiff said to McLean at the time, "It cannot be possible that your gas costs

that much," to which he, McLean, replied that they were entitled to charge interest on their investment, and that the plaintiff then wrote in those figures, stating at the time, "It does not make any difference to me. If the committee ask me, I will give these as your figures." The plaintiff further testified that the items of cost could only come from the books, which were kept at the office of the secretary of the company; that the plaintiff could approximate the cost of gas in the holder from knowing the amount of coal that was used, and the cost of labor, but that there were many items entering into its manufacture which were not purchased by the plaintiff, and the cost of which was not furnished to him; that he never knew the actual cost of the manufacture of gas, and could not know it unless he had had access to the books of the company; that he never saw the books, either during his employment with the defendant company, or afterwards; and that it would have been impossible for him, estimating merely as an expert, and without the books of the company, to have figured the cost down to the hundredth part of a cent, as was done in the figures inserted in the memorandum.

The plaintiff further testified that he was not called as a witness on behalf of the defendant company in 1893, and gave no testimony before the committee that year. He states that the memorandum referred to was furnished for the private use of the defendant McLean, and was left with him for his own use. He further states, that in February, 1894, an investigation was made by the Senate committee into the cost of the manufacture of gas, and the plaintiff, by invitation, appeared before that committee, and testified that, in his opinion as an expert, gas could be put in the holder at from 30 to 32 cents per thousand feet, and could be distributed at from 20 to 22 cents per thousand feet.

After this testimony of the plaintiff had been given before the committee, and the same, or the substance thereof, published in the Washington city papers, there came a letter of inquiry from Mr. E. C. Brown, the publisher of "The Progressive Age," a journal or periodical published in New York city, of considerable circulation, and devoted to the interest of gas, electricity and water supply companies; and which letter of inquiry was dated at New York, February 12th, 1894, and was addressed to the Washington Gas Light Company, Washington, D. C. This letter was received by John Leetch, the general manager of the company. In the letter the writer says:

"I have watched with great interest the continued reports of the proceedings against your company as published in the local newspapers of your city, and I have been somewhat surprised at the character and extent of Mr. Lansden's testimony. Was his statement correctly reported in the Washington Star of 3rd inst.? Newspapers all over the country are taking up his figures and using them to suit their own ends against home companies. Any information you would care to give us concerning the object of Mr. Lansden's attack will be considered confidential as to source of information."

(Signed) E. C. BROWN.

In reply to this inquiry the defendant Leetch, as general manager of the defendant company, by letter dated Washington, D. C., February 13, 1894, acknowledged the receipt of Brown's letter of the 12th of February, and says:

"As Mr. Lansden is no longer in the employ of the gas company, the motive was generally understood that prompted his statement. As the newspapers in Washington gave a correct version of his statement, there is no doubt he said that gas could be furnished at the meter for 70 cents and to the consumer for $1.00 per 1,000 cubic feet. This price at the meter was exclusive of repairs, services, etc.

"Under a former resolution of Congress, bearing date of February, 1893, Mr. Lansden was called upon to answer certain questions bearing upon the reduction of the price of gas in Washington and made the following replies:

"'Q. What does gas cost to manufacture at your works?

"'A. It costs 48.38c. per thousand in the holder and 40.09c. per thousand for distribution.

"'Q. Can you in any way reduce the cost of gas in the manufacturing, so your company could sell for less to the consumer?

"'A. I know of but one way that a small amount could be saved—that is, by reducing the salaries of our clerks and the price paid to our laborers. This we would not like to do.

"'Q. How do the prices charged for lamps in Washington compare with other cities?

"'A. They are as low as anywhere where the same amount of gas is burned to the lamp and the same number of hours lighted in the year, and when the company lights and cleans the lamps.'

"You will notice that he makes a difference of about 18½ cents per 1,000 feet then as compared with his statement now, although he must know that the material used—coal and labor—is just the same now as then, except the price of nap-tha, which is higher. You can try to reconcile the two statements."

(Signed) JOHN LEETCH,
General Manager.

87 On the 14th of February, 1894, and again on the 19th of that month, Brown wrote to Leetch, addressing him as the general manager of the Washington Gas Light Company, requesting data as to the testimony of Lansden before the congressional committee, with an avowed purpose of publishing and exposing its conflicting statements. In the first of these letters Brown, in referring to a previous letter of Leetch, says:

"Your statements, as contained therein, are exceedingly interesting, I can assure you. It would seem that the inference as to the occasion for the statement could only result from one cause.

"I would ask you, if you can do so without too much trouble to yourself, to give me categorically the questions propounded to Mr. Lansden and answered by him as reported in 'The Star' of the 3d inst. I should like to reproduce exactly the questions and his replies under the former resolution of Congress, February, 1893, and follow up with the same covering the present investigation. I will

not ask you to hurry about this, for I cannot use the matter until our issue of the 1st of March, but then, I can assure you, I will take it up in the proper way. Any other facts of interest that you can give me in this connection I shall appreciate."

In the second of these letters, that of February 19, 1894, Brown says:

"I hope you are intending to give me questions propounded to and answered by Mr. Lansden during the present investigation similar to the manner in which you gave me the questions then answered by him under the former resolution, as appears in your letter of the 13th. I am wanting to treat this matter in the way it should be touched on, and I have in mind publishing Mr. Lansden's testimony on this particular point side by side."

In reply to these two letters, asking for data to enable the publisher of "The Progressive Age" to prepare and publish the article complained of in the paper to be issued on the 1st of March, 1894, Leetch, on the 20th of February, 1894, writes to Brown, and says:

"This delay in reply was my inability to secure a copy of report of proceedings before investigating committee of Congress. Only about twenty copies have thus far been printed for use of committee. Today I received a copy, which I herewith enclose for your use."

(Signed) JOHN LEETCH,
Gen'l Manager.

As will be observed, the first of the letters from Brown, that of the 12th of February, 1894, was addressed to the Washington Gas Light Company and answered by Leetch as general manager of the company, and the subsequent letters from Brown were addressed to John Leetch as the general manager of the company. These letters, it appears, were all placed among the files of papers in the office of the company, in the keeping of the secretary; and it further appears that the replies to these letters of Brown were copied in the letter book of the company kept by the secretary. There is nothing to indicate that Leetch, in furnishing the data to Brown, was acting merely on his own individual account and responsibility, irrespective of his character and position as general manager of the company, and for its benefit. On the contrary, it would clearly appear that he was acting in the interest of and for the company, in his character of general manager, and that such conduct was within the scope of his authority as such general manager of the affairs of the company. Indeed, there is nothing in the case that would even suggest that he had any mere personal interest or object to subserve in what he did, apart from the interest of the company. He was manifestly acting for the company, and as its officer and agent, and the jury have so found by their verdict.

On the 1st of March, 1894, the libelous article complained of appeared in the "Progressive Age." In that article various things are said in reference to the plaintiff Lansden, and, among others it is stated, that "a congressional committee has been investigating the Washington Gas Light Company. Complaints were lodged by

some of the patrons of the company with the committee on the District of Columbia, which has jurisdiction in all matters affecting affairs connected with the capital city, and Congress ordered an investigation. Many witnesses have been heard on both sides of the question, and among them appeared Mr. Thomas G. Lansden, who had filled the position of superintendent with this company for a period of seven years prior to his resignation, in June of last year. This gentleman did not come forward, as might have been expected, to render such help as he could to assist his former associates over their present difficulties and to say a good word in behalf of the company with which he had so long been identified and by which he had been most generously requited; on the contrary, Mr. Lansden has arrayed himself within the ranks of those who sought to tear down and lay waste the business and emoluments of his former employers. Moreover, by reason of the nature of his testimony, Mr. Lansden has caused a report of his statements to be circulated the length and breadth of the land, and the subject-matter contained therein is well calculated to do the utmost harm to gas interests everywhere. Mr. Lansden's statements, as made under oath before this investigating committee, have been telegraphed from one end of the country to the other, and newspapers in many of the principal cities throughout the United States have copied the statements which have appeared in all Washington papers during the progress of the investigation. To what extent is best shown when we say that more than a score of newspapers containing Mr. Lansden's statements about the cost of making and distributing gas have come to our notice since his testimony was given, and the end is not yet. The figures of cost supplied by Mr. Lansden are startling, to say the least, and more than one gas company will, we apprehend, ere long, find itself confronted with his figures and compelled to battle hard in an effort to overcome the bad effects on the public mind.

"It is because of the general interest that is likely to suffer for Mr. Lauden's indiscretion that we give heed to the matter, not through a desire to extend special favor to the Washington company; nor is it because of any ill-will entertained by us for Mr. Lansden. If the cause of the company is just, as we believe
88 it to be, it will come out of the investigation a victor. The present investigation is not the first in which Mr. Lansden has appeared as witness. Only a year ago a similar inquiry, emanating from the same quarter, was instituted against the Washington Gas Light Company. Then Mr. Lansden appeared as a witness in behalf of the company. He at that time occupied the position of superintendent with the company. His testimony then and that of this year are so sadly at variance that we should be remiss in our duty if we permitted the occasion to pass without directing attention to these differences. Moreover, we should be guilty of withholding from gas managers information which will be of material assistance to them in breaking the force and effect of Mr. Lansden's recent statements.

"Under a former resolution of Congress bearing date of February,

1893, Mr. Lansden was called upon to answer certain questions bearing upon the reduction of the price of gas at Washington. We herewith give the questions propounded to Mr. Lansden during the investigation of last year and his replies thereto. This we follow with the interrogatories put to him and his answers during the present investigation."

The writer then proceeds to set out, *in totidem verbis*, for the purpose of showing the variant and conflicting statements in the testimony of the plaintiff, the interrogatories and answers of 1893 being those furnished by the defendant Leetch in his letter of February 12th, 1894, to Brown, and the interrogatories and answers of 1894 being those, as we may suppose, that were furnished by Leetch in his letter of February 20th, 1894, enclosing copy of report of the committee of Congress, to be used by Brown.

The writer of the libelous article then proceeds:

"From the foregoing extracts of this witness' testimony only one of two conclusions can be arrived at, and we are too sensible of the reader's power of analysis and feel too keenly for the witness to heap coals of fire on the head of one who, it is only too evident, has allowed his sense of justice to be distorted by real or fancied grievances. The testimony given by Mr. Lansden in 1893 states in effect that there is no way open to his company by which it could reduce the cost of manufacturing gas. In 1894 he tells the committee that, taxes and repairs added—items not considered in the inquiry of the previous year—the cost of gas delivered to the consumer could be brought within 70 cents, or about 18½ cents less per thousand than he quoted as the lowest manufacturing and distributing cost the year before; and yet Mr. Lansden must know that the generating apparatus at the Washington works is the same as when he filled the position of superintendent; that the cost of all materials used, coal and labor, are just the same, save only nap-tha, which is now higher in price than when he testified a year ago.

"Every man must be the custodian of his own conscience, and it is not for us to decide how Mr. Lansden will reconcile himself to his present unhappy position. If the gentleman has given up all thought of again associating himself with a gas enterprise, possibly he is indifferent to the effect of his predicament, but if he still entertains an idea of continuing his former calling he should lose no time in setting himself straight in the eyes of his former associates. In view of the testimony, we can readily believe this will prove a most difficult undertaking; but there is always two sides to a story, and possibly Mr. Lansden may have in reserve some evidence that will enable him to sustain his present position; if so, our columns are open to him for such purpose."

It has not been seriously contended that the article itself as published is not libelous; but the question is, who are liable for the publication? Any and all publications in writing or in print, imputing to another crime, or disgraceful, or fraudulent, or dishonest conduct, or which are injurious to the private character or credit of another, or which tend to render a party ridiculous or contemptible in the relations of private life, are libelous, and an action for dam-

ages is maintainable against the writer and publisher, unless the publication is embraced within that class of communications which are termed privileged communications, or unless the libeler can prove the truth of the libel. Digby *v.* Thompson, 4 B. & Ad., 821. And so, if, by such writing or print, it be imputed to a party that he is unfit to be trusted with money, or that he is guilty of treachery or ingratitude to his friends and benefactors, or of misconduct in an office of trust, an action will lie. Cheese *v.* Scales, 10 M. & W., 488.

Of course there can be no question at this day as to the right of the plaintiff to maintain an action for libel against the gas light company, a corporation, if the corporation has authorized or made itself liable in any manner for the publication of the libel. Phil., Wilm. & Balto. R. Co. *v.* Quigley, 21 How., 202; Fogg *v.* Boston & Lowell R. Co., 148 Mass., 513.

In this case, as we have stated before, the principal question is, whether the defendants, or any of them, against whom the judgment below was rendered, are or is responsible for the publication of the libel set out in the declaration? It is conceded that the alleged libel was not actually written and published, in the terms of the article printed in "The Progressive Age," by any of the defendants; but it is contended that the article was composed and published by their authority, or procurement, or that they conduced to such publication.

In 2 Starkie on Libel and Slander (2d Eng. ed.), 28, it is said "that the declaration generally avers that the defendant published and caused to be published; but the latter words seem to be perfectly unnecessary, either in a civil or criminal proceeding; in civil proceedings the principal is to all purposes identified with the agent employed by him to do any specific act. A consent by the master to the act of the servant in printing a libel is *prima facie* evidence of publication by the master, and an allegation that the defendant published the libel is satisfied by proof that it was published by his agent, if an authority from the principal to the agent can be proved." And again, at page 225, of the same volume, it is laid down by the author as text law, that, "according to the general rule of law, it is clear that all who are in any degree accessory to the publication of a libel, and by any means whatever conduce to the
89 publication, are to be considered as principals in the act of publication; thus, if one suggest illegal matter, in order that another may write or print it, and that a third may publish it, all are equally amenable for the act of publication, when it has been so effected."

And in the work of Sir Frederick Pollock on the Law of Torts, p. 168, in treating of the law of defamation, the author says: "On the general principles of liability, a man is deemed to publish that which is published by his authority. And the authority need not be to publish a particular form of words. A general request, or words intended and acted on as such, to take public notice of a matter, may make the speaker answerable for what is published in conformity to the general sense and substance of his request."

This principle would seem to result from an obvious principle of reason and justice; for otherwise an irresponsible person might be put forward, and the person really producing or inciting the publication, and without whose contribution it would not likely ever have been published, might remain in entire safety. This would not be according to the well-settled principles of law, which intend that a party who really instigates or incites a wrongful act shall be responsible therefor.

This principle of liability, as applied in the case of libel, is very fully and clearly illustrated and enforced in the case of Parker *v.* Prescott, L. R. 4 Exch. 169, in the Exchequer chamber. That action was against two defendants, and the question turned upon the sufficiency of the evidence to hold the defendants liable for the publication of the libel. The learned judge before whom the case was tried at *nisi prius* thought the evidence insufficient, and directed a verdict for the defendants. The case was taken on bill of exception into the Exchequer chamber, and was there heard before five judges, three of whom held the ruling below to have been erroneous. They held it to be clear law, that where a man makes a request of another to publish defamatory matter, of which for the purpose he gives him a statement, whether in full or in an outline, and the agent publishes that matter, adhering to the sense and substance of it, although the language be to some extent his own, the man making the request is liable to an action as the publisher.

The case was held under advisement, and the learned justice, in delivering the opinion of the majority of the court, said: "The libels complained of were reports of certain proceedings at a meeting of the board of guardians for the parish of St. Marylebone, which were published in some local newspapers. It appeared in evidence that at the meeting a discussion took place respecting the conduct of the plaintiff towards his daughter, who was then an inmate of the workhouse, and the history of the case, as stated at the meeting, in the absence (be it observed) of the plaintiff, and the remarks made upon it, were of a highly defamatory nature; indeed, the story was spoken of by one of the defendants at the meeting as a very scandalous case with reference to the conduct of the plaintiff. The defendant Prescott was chairman of the meeting, and Ellis, the other defendant, was also present, taking part in the proceedings. Reporters of local newspapers, in which the libel appeared, attended the meeting. The following evidence was given to connect the defendants with the publication. The defendant Ellis said he hoped the local press would take notice of this very scandalous case, and requested the chairman *to give an outline of it.* This was done by several members of the board, and the chief facts were then taken down by the reporters. The defendant Prescott also said, in the course of his statement relative to the case: 'I am glad gentlemen of the press are in the room, and I hope they will take notice of it.' On which the other defendant Ellis said, 'and so do I.' The defendant Prescott also said he hoped publicity would be given to the matter. It was proved by the reporters that the reports published were a correct summary of what took place, and one of the

reporters stated that he had told the editor of the paper what the defendants had said before the publication."

It was contended that what was said by the defendants did not amount to a request to the reporters to publish the proceedings, but was a mere expression of a wish or hope that such proceedings should be published. In answer, however, to this contention the court said: "But upon consideration of the circumstances of this case, I think there was evidence for the jury on the two questions which ought to have been submitted, viz: First, of a request to publish the proceedings of the meeting relating to the plaintiff's conduct; and, second, that the reports contained a correct account of the proceedings as the defendants meant it should appear."

After stating the evidence bearing on these questions of fact, the court proceeded to say: "Whether the libelous matter published is in pursuance of, and in accordance with, the request, or a departure from it, and so unauthorized, would be a question to be considered on the circumstances of the particular case." And further on, in answer to the argument for the defense, the court said: "It was strongly urged for the defendants, that they could not be liable unless they authorized the libel in the very words in which it was published. If this argument is correct, then it must follow that a man could never be liable when he desired another to make and publish an outline or summary of a speech or writing, because such an outline or summary necessitates condensation and consequent alteration of language. But the argument cannot, as it seems to me, be correct. The man who requests another to make and publish an outline or summary of a speech, writing, or proceedings, must know that the words will be to some extent those of him who makes such summary or outline; and he must, therefore, be taken to constitute him an agent for the purpose, and be answerable for the result, subject always to the question whether the authority has been really followed. If this be not so, a man might become a libeler with impunity. Again, if the very words of the libel, and not its substance, are in these cases to be regarded, a man who gives the manuscript of a libel to an agent to print and publish would not be answerable, if by accident or negligence
90 there were variations in some of the words, although not in the substance, of the libel." The ruling of the court below was reversed, and a new trial ordered.

In all such cases as the present it is a question for the jury to determine whether the corporation sought to be held liable had authorized or ratified the publication, or whether the publication complained of was made or directed by its servants or agents, in the course of their employment. Fogg *v.* Boston & Lowell R. Co., 148 Mass. 513. In this case, as we have seen, the defendant Leetch was the general manager of the business and affairs of the gas company, and it was fully within the scope of his duties as such general manager, to protect and look to the general welfare of the company. In these and other circumstances there was evidence furnished to be submitted to the jury, to establish the fact that the libel was published by the authority of Leetch, while acting for and on

behalf of the company, and within the scope of his authority as such general manager.

This question of fact was fully and fairly submitted to the jury by the first instruction given at the instance of the plaintiff, and as modified by the court. There was a redundancy of phraseology employed, it is true, but there is nothing in the language that could mislead the jury. The plaintiff's case as against the gas company and its general manager was fully embraced by that instruction. By that instruction the jury were directed, that if defendant Leetch wrote and sent the letter of the 13th of February, 1894, to Brown, in the course of his duties as general manager of the defendant company, knowing Brown to be the publisher of the "Progressive Age," a paper devoted to the interests of gas-producers, "then it was a question for the jury to determine, from all the facts and circumstances of the case, whether the said letter was or was not so written and sent for the purpose of supplying the *data* which it contains for a publication in said 'Progressive Age,' or with the knowledge that it was likely to be or probably would be used for such purpose; and if the jury believe from the evidence that it was so written and sent maliciously for such purpose or with such knowledge, and that the article complained of in the plaintiff's declaration was in fact published and circulated in said 'Progressive Age,' then, to the extent that the contents of said article were suggested and inspired by said letter, if the jury shall believe from the evidence that such contents were so suggested and inspired, the defendant gas company and the defendant Leetch are legally responsible for the publishing of said article; and if the jury believe from the evidence that said article falsely and maliciously charges the plaintiff with having testified contradictorily and falsely before any committee of Congress, from improper motives and in violation of his duty to the Washington Gas Light Company, his former employer, and that such charges were fairly and naturally suggested and inspired by said letter, then the plaintiff is entitled to a verdict against the defendants the gas company and Leetch."

To this instruction the court added the following, as a qualification or explanation:

"But if you believe from the evidence that they communicated any false and libelous matter about the plaintiff to said Brown, knowing it to be false, with the intent or consent, expressed or implied, that the same should be published, you will be justified in finding malice therefrom, unless you shall believe from the whole evidence that no malice existed. The meaning of malice as here used is not confined to its ordinary meaning of hatred or ill will, but means also an intention to injure the plaintiff or a reckless disregard of his rights and of the consequences which might result to him from the false publication."

With respect to the defendant Bailey, the second instruction given on request of the plaintiff presents a case against him, upon the assumption of the truth of the facts therein stated. There was evidence sufficient tending to establish those facts. And the court committed no error in refusing to direct a verdict in favor of any

of the defendants against whom the jury found a verdict. There was no ground for contending that there was any such fatal variance between the libel set forth in the declaration and the evidence, as would defeat the action as against the defendants found guilty by the verdict of the jury.

In regard to the third instruction given on request of the plaintiff, relating to the question of damages, we do not understand that there is any serious objection to that instruction. It would seem to be quite free from any substantial ground of objection. And in this connection, it is proper to observe, that the jury were expressly instructed by the fourteenth prayer of the defendants, which was granted by the court, that the plaintiff was not entitled to recover punitive damages against any of the defendants. Hence the ruling of the court in admitting evidence as to the financial condition of the defendant, the gas company, could not be prejudicial to the defendants, and that ruling, therefore, does not constitute reversible error.

The defendants offered twenty-one prayers for instruction to the jury; but of this number only four were granted. There were many questions attempted to be raised by the prayers that were rejected. Only a portion of them, however, are made the subjects of error specially assigned in this court.

By the seventh prayer of the defendants, the court was asked to instruct the jury that if they should find from the evidence that the defendants did not request or solicit the publication of the article in "The Progressive Age," and that the article set out in the declaration was published without their knowledge, then their verdict should be for the defendants. This the court refused for obvious reasons. It plainly ignored the evidence as to one of the defendants, at least; and instead of the prayer thus offered, the court instructed the jury, "that if they should find that the defendants did not request, solicit, *intend, or inspire* the publication of any article in 'The Progressive Age' of and concerning the plaintiff, and that the article set forth in the plaintiff's declaration was published without their knowledge *or procurement, directly or indirectly,* then their verdict should be for the defendants and for each defendant not so participating in the publication thereof."

91 The defendants excepted to the refusal of their prayer, and to the granting of the substitute therefor.

Some of the terms employed in the substituted instruction are objected to as being indefinite and inappropriate. Whether the terms objected to are the most appropriate that could have been selected to express the thought intended to be conveyed by the instruction, may admit of some question; but the instruction must be read in the light of the evidence and in connection with all the other instructions given. In so considering it, we perceive no ground for supposing that it was misleading to the jury, nor do we perceive that there was any error in the ruling of the court thereon.

In the eighth prayer of the defendants, the court was requested to instruct the jury, that if they found that the article complained

of as libelous was not composed and published, or procured to be composed and published by the defendants *as an entirety*, as charged by the plaintiff, then their verdict should be for the defendants. This was rejected, and the defendants excepted. The court, in our opinion, was clearly right in rejecting this prayer. The proposition involved has been disposed of in what we have already said in regard to the main question of publication, and in considering the questions presented by the instructions granted at the instance of the plaintiff. Parker *v.* Prescott, *supra*.

The defendants set up the defense of privileged communication, and by their thirteenth prayer they requested the court to instruct the jury "that the letter of February 13, 1894, signed John Leetch, general manager, is a privileged communication, and before they could find a verdict against the defendants they must find the existence of malice against the plaintiff—that is, an intent to injure the plaintiff—as the motive of the defendant or defendants in writing such letter, and their verdict must be in favor of any and all the defendants in whom no malice or intent to injure the plaintiff was shown to exist at the time of the writing of said letter." This application for instruction was rejected, and the defendants excepted; and this ruling of the court is assigned as error.

This request to declare the letter of the 13th of February, 1894, a privileged communication, had nothing, either of law or fact, to support it. In the first place, that letter is not the libel declared on; it is only a part of the evidence to show the authority, aid and assistance furnished for composing and publishing the libel set out in the declaration. In the next place, the occasion of the publication furnished no privilege to any of the parties. The writing complained of was not composed and published in pursuance of any right or duty, legal or moral, private or public, on the part of the defendants. The defendants were under no obligation to furnish the data or information requested by Brown to be published in the "Progressive Age;" or to enable him to compose and publish the libelous article complained of. By furnishing the data requested, knowing the purpose for which it was to be used, they incurred the responsibility for the act of Brown, to the extent of the authority, aid and assistance given. If, however, the letters written by Leetch to Brown, could be regarded as privileged as between themselves, they certainly could not furnish matter to be entitled to privilege that was intended to be published in a public journal or periodical. The privilege, if it were conceded to exist as to the letters of Leetch, could not extend to the publication of the contents or substance of those letters in a public journal or periodical, issued for circulation among the public generally. Phil., Wilm. & Balto. R. Co. *v.* Quigley, 21 How. 202. In such publication the libelous article would lose all the right to privilege which it might otherwise claim. Without the protection of privileged communication, the publication of a libel is a wrongful act, presumably injurious to the party to whom it relates, and in the absence of legal excuse gives a right of recovery irrespective of the intent of the defendant who published it; and this although he had reason to believe the statement

to be true, and was actuated by an honest or even commendable motive in making the publication. Holmes *v.* Jones, 147 N. Y. 59. The question of damages depends upon other considerations. It is clear, therefore, the court was right in rejecting the thirteenth prayer of the defendants.

There is a question raised in this court, by assignment of error, which was not raised or passed upon in the court below; and that is as to the sufficiency of the verdict of the jury. As we have already stated, the action was brought against five defendants, and they all pleaded jointly the general issue plea of not guilty. The verdict was rendered against three of the defendants, and there does not appear to have been any finding at all as to the other two. This was a defective verdict, and if a motion in arrest of judgment had been made, it would have been set aside. But there was no such motion made, and the defendants against whom the verdict was found were content to allow judgment on the verdict to be entered against them. After suffering judgment to be entered on the verdict without question, it is too late, now, in this court, to raise the question as to the validity of the verdict and judgment thereon. Every intendment must be made in support of the verdict and judgment. After judgment entered, it may be well presumed that the defendants who were not included in the verdict of guilty were intended to be found not guilty; as in the cases of Gulf, etc., R. Co. *v.* James, 73 Texas, 12, and Lockwood *v.* Bartlett, 7 N. Y. Supp. 481. Or, it might well be presumed, that on the plaintiff taking judgment against the three defendants found guilty on the general issue, that he, by implication and intendment, discharged the other defendants, by way of *nolle prosequi*, which could be entered as well after as before verdict, and even after judgment.

"In cases of tort against several defendants, though they *all join* in the same plea, and are found jointly guilty, yet the plaintiff may, after verdict, enter a *nolle prosequi* as to some of them, and take judgment against the rest. The reason is said to be, that the action is in its nature *joint and several;* and, as the plaintiff might originally have commenced his suit against one only, and proceeded to judgment and execution against him alone, so he might, after the verdict against several, elect to take his damages against either of them." Minor *v.* Mechanics' Bank, 1 Pet. 46, 74; Ward *v.* Taylor, 1 Pa. St. 238. There can be no question of contribution as between the defendants, if that were supposed to be material.

Upon the whole case, we find no ground for reversal of the judgment, and the same must be affirmed; *and it is so ordered.*

Judgment affirmed.

92 WEDNESDAY, *December 9th, A. D.* 1896.

THE WASHINGTON GAS LIGHT COMPANY, Charles B. Bailey, and John Leetch, Appellants,
vs.
THOMAS G. LANSDEN.
No. 583. October Term, 1896.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. CHIEF JUSTICE ALVEY.

December 9, 1896.

93 THURSDAY, *December 17th, A. D.* 1896.

THE WASHINGTON GAS LIGHT COMPANY, CHARLES B. BAILEY, and JOHN LEETCH, Appellants,
vs.
THOMAS G. LANSDEN.
No. 583.

On motion of Mr. W. D. Davidge, of counsel for the appellants in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving supersedeas bond in the sum of twenty thousand dollars.

94 In the Court of Appeals of the District of Columbia.

THE WASHINGTON GAS LIGHT COMPANY, CHARLES B. BAILEY, and JOHN LEETCH, Appellants,
vs.
THOMAS G. LANSDEN, Appellee.
No. 583.

Know all men by these presents that we, Washington Gas Light Company, Charles B. Bailey, and John Leetch, as principals, and American Surety Company, as surety, are held and firmly bound unto Thomas G. Lansden, his heirs, executors, administrators, or assigns, in the full and just sum of twenty thousand ($20,000), dollars, to be paid to the said Thomas G. Lansden, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of December, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas the above-named Washington Gas Light Company, Charles B. Bailey, and John Leetch have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment

rendered in the above-entitled suit, and a citation directed to the said Thomas G. Lansden, citing and admonishing him to be and appear in the Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof.

Now, the condition of this obligation is such that if the said Washington Gas Light Company, Charles B. Bailey, and John Leetch shall prosecute their said writ of error to effect and answer all damages and costs if they shall fail to make good their
95 plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL.] WASHINGTON GAS LIGHT COMPANY.
JOHN R. McLEAN, *President.*

Attest: W. B. ORME, *Secretary.*

CHARLES B. BAILEY. [SEAL.]
JOHN LEETCH. [SEAL.]

Sealed and delivered in the presence of—
GEO. M. WHITWELL.

[SEAL.] AMERICAN SECURITY COMPANY,
By DAVID B. SICKELS, 2d *Vice-president.*

Attest: CORTLANDT S. VAN RENSSELAER, *Attorney.*

Approved the 24th day of December, 1896, to operate as a supersedeas bond.

R. H. ALVEY,
Chief Justice, Court of Appeals, D. C.

96 STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 21st day of December, 1896, before me personally appeared David B. Sickles, 2d vice-president of the American Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the 2d vice-president of the American Surety Company of New York; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of trustees of said company, and that he signed said instrument as 2d vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and the said David B. Sickels further said that he was acquainted with Cortlandt S. Van Rensselaer and knew him to be one of the attorneys of said company; that the signature of said Cortlandt S. Van Rensselaer subscribed to the said instrument is in the genuine handwriting of the said Cortlandt S. Van Rensselaer and was thereto

subscribed by the like order of the said board of trustees and in the presence of him, the said David B. Sickels, 2d vice-president.

[SEAL OF NOTARY PUBLIC.] WM. E. MINER,
Notary Public, No. 175, *New York Co.*

Cert's filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Rockland co's.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"*Resolved*, That the president and vice-presidents be, and they hereby are, and each one of them is authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for or on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed, such guarantee, bonds, and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

CITY AND COUNTY OF NEW YORK, *ss:*

I, Cortlandt S. Van Rensselaer, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 21st day of December, 1896.

[Seal of American *Security* Company.]

CORTLANDT S. VAN RENSSELAER, *Attorney.*

28.431. C. R. F.

97 American Surety Company of New York.

General offices, 100 Broadway. Incorporated April 14, 1884.

Financial Statement, December 31, 1895.

Resources.

Real estate and improvements	$3,152,175 52		
Less payables	100,000 00		
		$3,052,175 52	
United States registered bonds		445,000 00	
Other stocks and bonds.....		662,526 25	
First liens and mortgages owned ..		323,909 99	
Mortgage loans and bills receivable.		115,623 76	
Accrued interest and dividends....		42,444 89	
Cash in banks and offices.....		84,407 44	
Premiums in course of collection ..		149,840 06	
			$4,875,927 91

Liabilities.

Capital stock.....	$2,500,000 00	
Surplus	1,000,000 00	
Undivided profits.....	568,522 74	
Premium-reserve requirement.....	568,999 06	
Claims in process of adjustment...	224,269 09	
Collateral and trust funds	14,137 02	
		$4,875,927 91

98 City and County of New York, *ss:*

Geo. L. Holmes, being duly sworn, deposes and says that he is the assistant secretary of the American Surety Company of New York, and that the foregoing is a true and correct statement of the financial condition of said surety company as of December 31, 1895, to the best of his knowledge and belief.

GEO. L. HOLMES.

Sworn to before me this 21st day of December, 1896.

[SEAL.] WM. E. MINER,
Notary Public, New York County.

Endorsed: No. 583. Washington Gas Light Co. *et al. vs.* Thomas G. Lansden. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Dec. 26, 1896. Robert Willett, clerk.

99 United States of America, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, be-

fore you or some of you, between The Washington Gas Light Company, Charles B. Bailey, and John Leetch, appellants, and Thomas G. Lansden, appellee, a manifest error hath happened, to the great damage of the said appellants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of December, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal Court of Appeals, District of Columbia.]

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

100 UNITED STATES OF AMERICA, *ss:*

To Thomas G. Lansden, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein The Washington Gas Light Company, Charles B. Bailey, and John Leetch are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 26th day of December, in the year of our Lord one thousand eight hundred and ninety-six.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted December 26th, 1896.

J. J. DARLINGTON.
J. A. J.

[Endorsed:] Court of Appeals, District of Columbia. Filed Dec. 26, 1896. Robert Willett, clerk.

101 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 100, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of The Washington Gas Light Company, Charles B. Bailey, and John Leetch, appellants, *vs.* Thomas G. Lansden, No. 583, October term, 1896, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 28th day of December, A. D. 1896.

[Seal Court of Appeals, District of Columbia.]

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,459. District of Columbia Court of Appeals. Term No., 680. The Washington Gas Light Company, Charles B. Bailey, and John Leetch, plaintiffs in error, *vs.* Thomas G. Lansden. Filed December 29th, 1896.